Supreme Court, U.S.
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Docket No. _____

IN THE SUPREME COURT OF THE UNITED STATES

John S. Karls
Petitioner
v.
The Goldman Sachs Group, Inc., et. al.
Respondents

John S. Karls
Petitioner
v.
Citicorp of North America, Inc., et. al.
Respondents

John S. Karls
Petitioner
v.
ING Financial Holdings Corporation, et. al.
Respondents

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI
(Three Judgments Involving Identical
Questions Per Supreme Court Rule 12(4))

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I. Questions Presented For Review

A. In a diversity-jurisdiction case, does the Ninth Circuit Court of Appeals have the power under *Erie Railroad v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) and, for example, *Freund v. Amersham Holdings, Inc.*, 347 F.3d 752 (CA9 2003), to ignore the well-settled American and Californian common law of conversion which includes the theft of "intangible property" that cannot exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" and instead, based solely on overly-broad dicta in two cases whose holdings easily fit within the well-settled rule, hold contrary to the well-settled rule – which would mean, *inter alia*, that the theft of Leonardo da Vinci's "Mona Lisa" could no longer be the subject of conversion because, absent Leonardo's "idea" or "artist's concept," the "Mona Lisa" is nothing more than a worthless piece of old canvas?

B. Is there a denial of "due process of law" under U.S. Const. Art. V when (1) the Ninth Circuit Court of Appeals' violates the Federal Rules of Appellate Procedure Rule 35 (the original three-judge panel illegally seized control of Petitioner's Petition for Rehearing En Banc, explicitly reconstrued it as a mere "Motion" and then dismissed the "Motion" without permitting the other Ninth Circuit judges to know anything about it) and (2) the U.S. District Court (N.D. Cal.) violates its own Civil Local Rule 7-3(d) (after Petitioner filed with the U.S. District Court the decision in 2 of the 12 virtually-identical

cases that remained in California Superior Court, the U.S. District Court permitted Respondents to file an illegal supplemental brief commenting on the state-court decisions while denying Petitioner any opportunity to comment)?

C. Is there a denial of "due process of law" under U.S. Const. Art. V and, under *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954), "equal protection of the law" pursuant to U.S. Const. Art. V, when the futures of American inner-city children are knowingly destroyed by the admitted-in-unprivileged-communications theft by Barclays Capital Ltd. of property which was legally pledged to fund "I Have A Dream"® Programs (which, for all Kindergartners in an inner-city school or in a public-housing project, provide tutoring and mentoring for that group through high school graduation with a guarantee of college tuition – which the First President Bush was fond of saying was the inspiration for the "1,000 points of light" portion of his 1989 Inaugural Address since he had done extensive fund-raising for IHAD-Houston where he resided and for IHAD-Boston which was sponsored by his nephew, Jamie Bush, and on whose national Advisory Board the Hon. Hillary Clinton served for many years until the 1991 Iowa caucuses), and which meets the same "cannot exist separate and apart from paper on which it is written or the physical substance in which it is embodied" as fine art – and the Ninth Circuit Court of Appeals and the U.S. District Court (N.D. Cal.) appear to be refusing to publish their opinions so that, for example, the ability of heirs of Holocaust victims

to recover the vast amount of fine art stolen by the Nazis and still contained in unknown private collections remains undisturbed?

II. List Of All Parties

John S. Karls v. Goldman Sachs Group, Inc., et. al.
Additional Respondents:

1. The Goldman Sachs U.S.-Tax "Consolidated Group" of Corporations

John S. Karls v. Citicorp North America, Inc., et. al.
Additional Respondents:

1. Citicorp USA, Inc.
2. Citicorp Aircraft Management, Inc.
3. Citicorp Bankers Leasing Corporation
4. Citicorp Credit Services, Inc. (USA)
5. Citicorp Del-Lease, Inc.
6. Citicorp Development Center, Inc.
7. Citicorp Diners Club Inc.
8. Citicorp Home Equity, Inc.
9. Citicorp Home Mortgage Services, Inc.
10. Citicorp National Services, Inc.
11. Citicorp Payment Services, Inc.
12. Citicorp Real Estate, Inc.
13. Citicorp Securities Services, Inc.
14. Citigroup Energy Inc.
15. Citigroup Global Markets Inc.
16. Citigroup Global Markets Realty Corp.
17. Citigroup Investments Inc.
18. Citigroup Management Corp.
19. Citigroup Technology, Inc.
20. The Citicorp U.S.-Tax "Consolidated Group" of Corporations

John S. Karls v. ING Financial Holdings Corporation, et. al.

Additional Respondents:

1. ING Financial Holdings Corporation
2. ING North America Insurance Corporation
3. ING Life Insurance and Annuity Company
4. ING USA Annuity and Life Insurance Company
5. Reliastar Life Insurance Company
6. Reliastar Life Insurance Company of New York
7. Security Life of Denver Insurance Company
8. The ING U.S.-Tax "Consolidated Group" of Life-Insurance Corporations
9. The ING U.S.-Tax "Consolidated Group" of Non Life-Insurance Corporations

III. Corporate Disclosure Statement

The sole Petitioner in all three actions, John S. Karls, is an individual.

IV. Table of Contents

V. Table of Cited Authorities.....17

VI. Citations Of The Official And Unofficial Reports Of The Opinions And Orders Entered In These Three Cases By Courts Or Administrative Agencies... 19

VII. A Concise Statement Of The Basis For Jurisdiction In The U.S. Supreme Court.....20

VIII. The Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations Involved In These Cases, Set Out Verbatim With Appropriate Citation.....22

IX. Statement Of The Facts Material To Consideration Of The Questions Presented.....26

A. Barclays Capital Ltd. Admits In Unprivileged Communications That It Stole Petitioner's Report And Provided Copies To 15 International Banks That Petitioner Sues For Conversion In California Superior Court.....26

B. California Superior Court Judge Curtis E.A. Karnow, In A De Facto "Pre-Packaged Appeal" Of *Karls v. Wachovia Trust Company of California, et. al.* and *Karls v. Wells*

Fargo & Company, Effectively Requests The California Court Of Appeal (First District), Which Had Appellate Jurisdiction Over All 15 Cases, To Re-Affirm Its Decision In *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) Before The California Superior Court Invests Time And Resources In Trying The 15 Cases.....28

C. Seven Cases Stayed In California Superior Court Awaiting Final Disposition of *Karls v. Wachovia Trust Company of California, et. al.* and *Karls v. Wells Fargo & Company*, One Case Settled, Two Banks Refuse Stays But Their Cases Still Effectively Controlled By Disposition of *Wachovia* and *Wells Fargo* – And The Three Remaining Cases (The Subject Of This Petition) Removed To U.S. District Court.....32

D. Petitioner Provides U.S. District Court With A Copy Of California Superior Court Judge Karnow's Orders Pursuant To U.S. District Court (ND Cal.) Civil Local Rule 7-3(d) Together With The Notation That, Since Briefing Had Been Completed On Respondents' Pre-Trial Motion To Dismiss, Petitioner Was Permitted To Make No Further Comment.....34

E. Respondents File Supplemental Brief on Judge Karnow's Opinion In Violation Of U.S. District Court (ND Cal.) Civil Local Rule 7-3(d) and U.S. District Court Judge Jeffrey S. White Cancels The Scheduled Hearing Which Would Have Been Petitioner's Only Opportunity To Legally Respond To Respondents' Illegal Supplementary Brief..... 34

F. "A Tale Of Two Dicta" – USDC Judge White Grants Respondents' Motion To Dismiss Citing Solely Two Dicta Of The California Superior Court of Appeal (Second District) In A Decision By Judge White Which Is Diametrically Opposed To *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) Which Judge White Fails To Even Mention – The Ninth Circuit Affirms In A Cryptic, Unpublished Opinion That Cites Only The Two Dicta.....35

G. Petitioner Files Solely A Petition For Re-Hearing En Banc By The Ninth Circuit And The Original Three-Judge Panel Illegally Seizes Control Of It, Reconstrues It As A Mere Motion For Rehearing, And Then Denies The "Motion" And Closes The Docket Without Permitting Any Of

The Other Ninth Circuit Judges To Learn About The Petition.....37

H. Meanwhile, Briefing Is Completed On May 13, 2010, In The De Facto "Pre-Packaged" Appeal of *Karls v. Wachovia Trust Company of California, et. al.* and *Karls v. Wells Fargo & Company,* Which Effectively Requests The California Court Of Appeal (First District) To Re-Affirm Its Decision In *Gladstone v. Hillel,* 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988), And Upon The Final Disposition Of Which Seven Other Related Cases Are Stayed And Two More Are Effectively Governed.....38

I. Extinguishing The First U.S. President Bush's Famous "1,000 Points Of Light" and Destroying The Hon. Hillary Clinton's Dream – Namely, The Education Of American Inner-City Children For Which Petitioner's Property Which Was Converted, Had Been Legally Pledged.....39

X. The Basis For Federal Jurisdiction In The Court Of First Instance.....43

XI. Argument.....44

A. **Re First Question Presented For Review:** In a diversity-jurisdiction case, does the Ninth Circuit Court of Appeals have the power under *Erie Railroad v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) and, for example, *Freund v. Amersham Holdings, Inc.*, 347 F.3d 752 (CA9 2003), to ignore the well-settled American and Californian common law of conversion which includes the theft of "intangible property" that cannot exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" and instead, based solely on overly-broad dicta in two cases whose holdings easily fit within the well-settled rule, hold contrary to the well-settled rule – which would mean, *inter alia*, that the theft of Leonardo da Vinci's "Mona Lisa" could no longer be the subject of conversion because, absent Leonardo's "idea" or "artist's concept," the "Mona Lisa" is nothing more than a worthless piece of old canvas?.....44

B. **Re: Second Question Presented For Review:** Is there a denial of "due process of law" under U.S. Const. Art. V when (1) the Ninth

Circuit Court of Appeals' violates the Federal Rules of Appellate Procedure 35 (the original three-judge panel illegally seized control of Petitioner's Petition for Rehearing En Banc, explicitly reconstrued it as a mere "Motion" and then dismissed the "Motion" without permitting the other Ninth Circuit judges to know anything about it) and (2) the U.S. District Court (N.D. Cal.) violates its own Civil Local Rule 7-3(d) (after Petitioner filed with the U.S. District Court the decision in 2 of the 12 virtually-identical cases that remained in California Superior Court, the U.S. District Court permitted Respondents to file an illegal supplemental brief commenting on the state-court decisions while denying Petitioner any opportunity to comment)?.....49

C. **Re: Third Question Presented For Review:** Is there a denial of "due process of law" under U.S. Const. Art. V and, under *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954), "equal protection of the law" pursuant to U.S. Const. Art. V, when the futures of American inner-city children are knowingly destroyed by the admitted-in-unprivileged-communications theft by Barclays Capital

Ltd. of property which was legally pledged to fund "I Have A Dream"® Programs (which, for all Kindergartners in an inner-city school or in a public-housing project, provide tutoring and mentoring for that group through high school graduation with a guarantee of college tuition – which the First President Bush was fond of saying was the inspiration for the "1,000 points of light" portion of his 1989 Inaugural Address since he had done extensive fund-raising for IHAD-Houston where he resided and for IHAD-Boston which was sponsored by his nephew, Jamie Bush, and on whose national Advisory Board the Hon. Hillary Clinton served for many years until the 1991 Iowa caucuses), and which meets the same "cannot exist separate and apart from paper on which it is written or the physical substance in which it is embodied" as fine art – and the Ninth Circuit Court of Appeals and the U.S. District Court (N.D. Cal.) appear to be refusing to publish their opinions so that, for example, the ability of heirs of Holocaust victims to recover the vast amount of fine art stolen by the Nazis and still contained in unknown private collections remains undisturbed?.....53

XII. Conclusion.....56

XIII. Appendix.....1a

Appendix - Table of Contents.....1a

U.S. Court of Appeals' March 17, 2010, Orders (1) Reconstruing Appellant's Petition For Rehearing En Banc As A Motion For Reconsideration, (2) Denying The Reconstrued "Motion" By The Original Three-Judge Panel, And (3) Closing The Docket –

- *Karls v. The Goldman Sachs Group, Inc., et. al.* (09-17438).....4a
- *Karls v. Citicorp North America, Inc., et. al.* (09-17439).....5a
- *Karls v. ING Financial Holdings Corporation, et. al.* (09-17442).....6a

U.S. District Court's September 29, 2009, Orders Granting Respondents' Motion To Dismiss For Failure To State A Claim Without Leave To Amend –

- *Karls v. The Goldman Sachs Group, Inc., et. al.* (C 09-03375 JSW).....7a
- *Karls v. Citicorp North America, Inc., et. al.* (C 09-03376 JSW).....12a
- *Karls v. ING Financial Holdings Corporation, et. al.* (C 09-03377 JSW) 17a

U.S. Court of Appeals' January 21, 2010, Orders Affirming The District Court's Judgment –

- *Karls v. The Goldman Sachs Group, Inc., et. al.* (09-17438).....22a
- *Karls v. Citicorp North America, Inc., et. al.* (09-17439).....23a
- *Karls v. ING Financial Holdings Corporation, et. al.* (09-17442).....24a

Petitioner's June 15, 2009, Complaint For Conversion in *Karls v. The Goldman Sachs Group, Inc., et. al.* (California Superior Court No. 09-489452 – U.S. District Court No. C 09-03375 – U.S. Court of Appeals No. 09-17438).....25a

Wall Street Journal First-Page Article Of June 30, 2006, Which Was Attached To, And Made A Part Of, The Complaint.....31a

Editorial Note: The Complaints in *Karls v. The Goldman Sachs Group, Inc., et. al., Karls v. Citicorp North America, Inc., et. al. and Karls v. ING Financial Holdings Corporation, et. al.* are virtually identical.

California Superior Court Judge Curtis E.A. Karnow's August 20, 2009, Orders in *Karls v. Wachovia Trust Co. of California, et. al.* 39a

Editorial Note: The Orders in *Karls v. Wells Fargo & Company* are identical.

Transcript of The News Hour With Jim Lehrer (aka, the MacNeil-Lehrer Report) For A November 16, 2009 Interview On The Continuing Hunt For Art Stolen By The Nazis (Much, If Not Most, Of Which Remains In Private Collections)..... .....43a

Petitioner's Certificate Of Interested Entities Or Persons Attached To His February 3, 2009, Petitions For Rehearing En Banc In *Karls v. Goldman Sachs Group, Inc., et. al.,, Karls v. Citicorp North America, Inc., et. al., and Karls v. ING Financial Holdings Corportion, et. al.* –

- Certificate Of Pro Se Counsel Regarding Certificate Of Interested Entities Or Persons.....50a
- Certificate Of Interested Entities Or Persons (Form).....51a
- Certificate Of Interested Entities Or Persons – Additional Information.... .....53a
- Petitioner's Resume Which Was Part Of The Certificate Of Interested Entities Or Persons – Additional Information 58a

V. Table Of Cited Authorities

Cases

Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954).....2, 53, 55, 56

Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc., 911 F.2d 242, (CA9 1990).....48

Erie Railroad v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).....1, 44, 48, 56

Freund v. Amersham Holdings, Inc., 347 F.3d 752 (CA9 2003).....1, 44

Gladstone v. Hillel, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988).....
.....28, 31, 32, 36, 37, 38, 39, 45, 47, 48, 52, 55

Italiani v. Metro-Goldwyn-Mayer Corporation, 45 Cal.App.2d 464, 114 P.2d 370 (3rd Dist. 1941).....29, 37, 45, 46, 47, 48, 55

Melchior v. New Line Productions, 106 Cal.App.4th 779, 131 Cal.Rptr. 347 (2nd Dist. 2003).....38, 46, 47

Minnicar v. Tors, 266 Cal.App.2d 495, 72 Cal.Rptr. 287 (2nd Dist. 1968).....37, 38, 46, 47

Peretz v. United States, 501 U.S. 923, 111 S.Ct. 2661, 115 L.Ed.2d 808 (1991).....50, 51, 53

Reddy v. Litton Indus., Inc., 912 F.2d 291 (CA9 1990).....48

Richmond Newspapers v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980).....50, 51, 53

Constitution – Statutes

U.S. Const. Art. V.....22, 48, 53, 55

Federal Rule of Appellate Procedure 35.....
.....1, 22, 38, 48, 53

U.S. District Court (ND Cal.) Civil Local Rule 7-3(d).....1, 24, 34, 35, 49, 51

Publications

18 Am.Jur.2d *Conversion § 7: Tangible and Intangible Property, Generally* (2009).....
.....29, 37, 45, 46, 47, 48, 55

Transcript

Transcript of The News Hour With Jim Lehrer (aka, the MacNeil-Lehrer Report), *Interview On The Continuing Hunt For Art Stolen By The Nazis (Much, If Not Most, Of Which Remains In Private Collections,* November 16, 2009.....28, 48

VI. Citations Of The Official And Unofficial Reports Of The Opinions And Orders Entered In These Three Cases By Courts Or Administrative Agencies

None of the opinions and orders entered in these three cases by any court or administrative agency have been published in any official or unofficial report.

VII. A Concise Statement Of The Basis For Jurisdiction In The U.S. Supreme Court

The date the judgment or order sought to be reviewed was entered:

> January 21, 2010, Orders of the Ninth Circuit Court of Appeals Affirming the District Court's Judgment in:
>
> - *Karls v. The Goldman Sachs Group, Inc., et. al.* (09-17438)
>
> - *Karls v. Citicorp North America, Inc., et. al.* (09-17439)
>
> - *Karls v. ING Financial Holdings Corporation, et. al.* (09-17442)

The date of any order respecting rehearing:

> March 17, 2010, Orders of the Ninth Circuit Court of Appeals (1) Reconstruing Appellant's Petition For Rehearing En Banc As A Motion For Reconsideration, (2) Denying The Reconstrued "Motion" By The Original Three-Judge Panel, And (3) Closing The Docket –
>
> - *Karls v. The Goldman Sachs Group, Inc., et. al.* (09-17438)
>
> - *Karls v. Citicorp North America, Inc., et. al.* (09-17439)

- *Karls v. ING Financial Holdings Corporation, et. al.* (09-17442)

The statutory provision believed to confer on the U.S. Supreme Court jurisdiction to review on a writ of certiorari the judgment or order in question.

U.S. Supreme Court Rule 10

Notifications Pursuant to Rule 29.4(b) or (c).

Not applicable.

VIII. The Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations Involved In These Cases, Set Out Verbatim With Appropriate Citation

U.S. Const. Art. V

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Federal Rules Of Appellate Procedure 35: En Banc Determination

> (a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

U.S. District Court (N.D. Cal.) Civil Local Rule 7: Motion Practice –

Rule 7-3(d): **Supplementary Material**

"Before the noticed hearing date, counsel may bring to the court's attention a relevant judicial opinion published after the date of the opposition or reply was filed by

serving and filing a Statement of Recent Decision, containing a citation to and providing a copy of the new opinion – without argument. Otherwise, once a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval."

IX. Statement Of The Facts Material To Consideration Of The Questions Presented

A. Barclays Capital Ltd. Admits In Unprivileged Communications That It Stole Petitioner's Report And Provided Copies To 15 International Banks That Petitioner Sues For Conversion In California Superior Court

These three actions for common-law conversion were among 15 such actions brought by the Petitioner in the California Superior Court (San Francisco County).

According to the Complaint, the "Property" was an "idea" that was contractually required to be explained "in the form of a written presentation, stating the accounting or tax benefit intended to be achieved, the transaction steps to be implemented, and the accounting or tax technical analysis" accompanied by diagrams.* The mere description of the "idea" in the Complaint required 3.5 pages without the transaction steps, or the technical analysis or the diagrams in the actual report.

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* The Property involved in this lawsuit was a financial product which takes advantage of the different views that the tax authorities of two different countries have regarding an entity (e.g., corporation or partnership), an instrument (e.g., debt or equity), the nature of an investment (e.g., lease or ownership), etc., etc. – each country supremely confidant that it has the "Holy Grail" and impervious to the views of any other country. Accordingly, neither the I.R.S. (which follows "substance) nor the U.K. Inland Revenue (which follows "form") would be able to challenge the propriety of the "Property" without renouncing their respective "Holy Grails" – which they have never been willing to do despite the consequences.

Barclays Capital Ltd. has admitted in unprivileged communications that it stole Petitioner's report and that the 15 different groups of Respondents acquired the Property from Barclays Capital Ltd. under conditions of confidentiality. Barclays Capital Ltd. is a U.K.-incorporated subsidiary of Barclays Bank PLC, a publicly-traded U.K.-incorporated bank..

Both the Complaints and the Wall Street Journal article attached to them allege that the "Property" was both confidential and proprietary. The *Karls v. The Goldman Sachs Group, Inc., et. al.* Complaint (Appendix, pp. 25a-30a – the *Citicorp* and *ING Bank* complaints are virtually identical) states at Appendix, p. 26a:

> "The Property is indeed confidential and proprietary.
>
> "The Property belongs to the Plaintiff."

Contrary to the finding of "fact" by the U.S. District Court, there has never been any reason to suppose that anyone has ever had access to the "Property" except under conditions of confidentiality from Barclays Capital Ltd. which has admitted to having stolen it. Indeed, the Wall Street Journal article attached to the Complaint reported (Appendix, pp. 31a-39a at p. 35a):

> "When the Wall Street Journal asked the OCC [U.S. Office of the Comptroller of the Currency] for documents on the transactions, several banks opposed their release, citing client confidentiality and trade secrets. Barclays doesn't trumpet the Jenkins team's success beyond occasional mention in its annual reports. Mr. Jenkins says talking about it could tip off competitors and

> jeopardize client confidentiality. Barclays declined to give details on how the cross border structures work." (Emphasis added.)

Common-law conversion permits the owner of stolen property to proceed against either the party that stole it or the party/parties that currently hold it.

The classic case of common-law conversion comprises the heirs of Holocaust victims whose fine art was stolen by the Nazis, with the heirs decades later suddenly discovering the identity of the current holder of the art and proceeding against the current holder for either the return of the art or its fair market value. Indeed, on November 16, 2009, The PBS News Hour With Jim Lehrer featured an interview of the author of a new book on the on-going efforts to locate the art stolen by the Nazis, most of which remains in unknown hands. The PBS News Hour transcript of that interview appears at Appendix pp. 43a-49a.

Since common-law conversion permits the owner of the property to proceed against either the party that stole it or the party/parties that currently hold it, the Petitioner elected to proceed against the 15 current holders.

B. California Superior Court Judge Curtis E.A. Karnow, In A De Facto "Pre-Packaged Appeal" Of *Karls v. Wachovia Trust Company of California, et. al.* and *Karls v. Wells Fargo & Company*, Effectively Requests The California Court Of Appeal (First District), Which Had Appellate Jurisdiction Over All 15 Cases, To Re-Affirm Its Decision In *Gladstone v. Hillel*, 203

Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) Before The California Superior Court Invests Time And Resources In Trying The 15 Cases

Karls v. Wachovia Trust Company of California, et. al. (Cal. Superior Court No. 487535) and *Karls v. Wells Fargo & Company* (Cal. Superior Court No. 486175) were combined for hearing on their Demurrers before the Superior Court's expert on intellectual property, Judge Curtis E.A. Karnow, who has had extensive experience in the field both in private practice and on the bench, and who has written extensively on the subject.

The Demurrers raised the question of whether an "idea" could be the subject of a common-law action for conversion and whether a common law action for conversion can succeed when copies of the original report containing the "idea" are made and distributed by the thief, but the victim retained his own copy of the original report and, therefore, has not been completely deprived of his property.

The Petitioner's brief responded by labeling the two points as the "Mona Lisa issue" and the "Rembrandt etchings issue" and by arguing:

1. With regard to the "Mona Lisa issue" the well-settled common-law of conversion has always been held to cover "intangible property" that cannot exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" – which was a quotation of Corpus Juris contained in the leading California case, *Italiani v. Metro-Goldwyn-Mayer Corporation,* 45 Cal.App.2d 464,

466, 114 P.2d 370 (3rd Dist. 1941) and also citing *Accord,* 18 Am.Jur.2d *Conversion § 7: Tangible and Intangible Property, Generally* (2009). Petitioner also argued that if this well-settled principle is changed, then there is no civil-law remedy for the theft of fine art such as Leonardo da Vinci's "Mona Lisa" which, except for Leonardo's "idea" (aka, "artist's concept"), is a worthless piece of old canvas.

2. With regard to the "Rembrandt etchings issue" the Respondents were only able to cite two cases involving "intermeddling" in which an owner of real property who disputed an occupant's continued right to occupy the premises, removed the personal property of the now-former occupant and stored it in the name of the now-former occupant. Petitioner also argued that if "intermeddling" is extended in the fashion desired by the Respondents, then there would be no civil-law remedy for the theft of a Rembrandt etching (from which, in the world of fine art, are made invaluable prints that are almost always limited in number by the owner of the etching to give the prints their value) if the thief returned to the true owner of the Rembrandt etching one of the prints.

The reaction of Judge Karnow at the August 14, 2009, hearing was to raise, *sua sponte*, the question of whether Petitioner's actions for common-law conversion were preempted by federal copyright law. Since the issue had not been raised by the Respondents, Petitioner requested an opportunity to

brief the issue and Judge Karnow granted both parties the opportunity to brief it. It appears obvious that Judge Karnow was being crafty because he knew that none of the briefs to that point had cited *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) which is significant for the following reasons:

- It was decided by the California Court of Appeals (First District) which had appellate jurisdiction over all of Petitioner's 15 cases;
- Regarding the "Mona Lisa issue" *Gladstone, supra,* had held in line with the authorities cited above that an "idea" or "artist's concept" was a proper subject for common-law conversion where the molds of a designer of fine jewelry had been stolen;
- Regarding the "Rembrandt etchings issue" *Gladstone, supra,* had held that a proper remedy for conversion included not only the return of the stolen molds, but also that all new molds made from the stolen molds and all jewelry made from any of the molds had to be destroyed or given to the Petitioner;
- Regarding the issue raised by Judge Karnow *sua sponte, Gladstone, supra,* held that wrongful possession in an action for common-law conversion is the "extra element" that precludes preemption under the federal copyright law.

After receiving the supplemental briefs on federal copyright preemption, Judge Karnow then granted the demurrers in an order (Appendix pp.

39a-42a is his *Wachovia* order, which is identical to the *Wells Fargo* order) which:

- Is diametrically opposed to the decision of the California Court of Appeal (First District) on all three points, and
- Adds the issue of the applicable statute of limitations even though it is satisfied for common-law conversion; and
- Grants the demurrer without leave to amend the Complaint.

The only rational explanation (1) for issuing an order that is diametrically opposed to a decision of the appellate court having jurisdiction over the appeals, (2) for raising *sua sponte* an additional issue and then deciding it adversely to a decision of the appellate court having jurisdiction over the appeals if Judge Karnow really believed were correct his other orders that were diametrically opposed to the appellate court having jurisdiction over the appeals, and (3) for refusing leave to amend the Complaint with the obvious intent to compel an appeal – is that Judge Karnow intended to engineer a "pre-packaged appeal" comprising a *de facto* request to the California Court of Appeal (First District) to re-affirm its decision in *Gladstone, supra,* before the California Superior Court invested its time and resources in the trial of 15 cases.

C. Seven Cases Stayed In California Superior Court Awaiting Final Disposition of *Karls v. Wachovia Trust Company of California, et. al.* and *Karls v. Wells Fargo & Company*, One Case Settled, Two Banks Refuse Stays But Their Cases Still Effectively Controlled By Disposition of *Wachovia* and *Wells*

***Fargo*, And The Three Remaining Cases (The Subject Of This Petition) Removed To U.S. District Court**

All 15 international financial institutions sued by the Petitioner for conversion of his Property are listed in Petitioner's Certificate of Interested Entities or Persons (Appendix, pp. 50-62) filed with his Petition for Rehearing Banc by the Ninth Circuit.

- *Wachovia* and *Wells Fargo* are pending in the California Court of Appeals (First District).
- 7 financial institutions, *ABN AMRO, AIG/AIU, Bank of America, Bear Stearns, HSBC Bank, JP Morgan Chase,* and *Merrill Lynch,* agreed last fall with the Petitioner to a stay of proceedings in their actions in the California Superior Court until there is a final disposition of the appeals in *Wachovia* and *Wells Fargo.*
- 1 financial institution, *BNP Paribas,* settled with the Petitioner on December 21, 2009.
- 2 financial institutions, *Mellon Financial Corporation* and *The Bank of New York,* refused to enter into stays, but their actions are still effectively governed by the final disposition of the appeals in *Wachovia* and *Wells Fargo.*
- 3 financial institutions, *Goldman Sachs, Citicorp,* and *ING Bank* removed their cases to U.S. District Court for the Northern District Court of California on the grounds of diversity of citizenship – their cases are the subject of this Petition.

D. Petitioner Provides U.S. District Court With A Copy Of California Superior Court Judge Karnow's Orders Pursuant To USDC Civil Local Rule 7-3(d) Together With The Notation That, Since Briefing Had Been Completed On Respondents' Pre-Trial Motion To Dismiss, Petitioner Was Permitted To Make No Further Comment

Following removal to the U.S. District Court (ND Cal.) of the three cases that are the subject of this Petition, they were deemed related and assigned to U.S. District Judge Jeffrey S. White.

On September 8, 2009, Petitioner filed with the U.S. District Court (ND Cal.) pursuant to Civil Local Rule 7-3(d) a copy of California Superior Court Judge Karnow's decisions described in Section IX-B above.

Since briefing had already been completed in the U.S. District Court with respect to Respondents' Pre-Trial Motion to Dismiss, Petitioner's filing noted that pursuant to Civil Local Rule 7-3(d), he was permitted to make no comment with the filing regarding Judge Karnow's decisions.

E. Respondents File Supplemental Brief on Judge Karnow's Opinion In Violation Of U.S. District Court (ND Cal.) Civil Local Rule 7-3(d) and U.S. District Court Judge Jeffrey S. White Cancels The Scheduled Hearing Which Would Have Been Petitioner's Only Opportunity To Legally Respond To Respondents' Illegal Supplementary Brief

Following the transmittal by Petitioner to the U.S. District Court (ND Cal.) the decisions of Superior Court Judge Karnow as described in IX-D above without substantive comment which was prohibited by Civil Local Rule 7-3(d), the Respondents filed with the U.S. District Court a supplemental brief in violation of Civil Local Rule 7-3(d) arguing the meaning and ramifications of Judge Karnow's decisions.

The only opportunity under Local Rule 7-3(d) for Petitioner to have commented legally regarding Judge Karnow's decisions would have been the hearing scheduled for October 2, 2009, on Respondents' Motion to Dismiss.

However, on September 29, 2009, U.S. District Court Judge White cancelled the hearing and simultaneously granted the motion.

F. "A Tale Of Two Dicta" – U.S. District Court Judge White Grants Respondents' Motion To Dismiss Citing Solely Two Dicta Of The California Superior Court of Appeal (Second District) In A Decision By Judge White Which Is Diametrically Opposed To *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) Which Judge White Fails To Even Mention – The Ninth Circuit Affirms In A Cryptic, Unpublished Opinion That Cites Only The Two Dicta

U.S. District Court Judge White granted Respondents' pre-trial Motion to Dismiss based on the "Mona Lisa issue" discussed in Section IX-B

above. His orders in all three cases are identical and appear at Appendix, pp. 7a-21a.

As discussed in Section IX-B, the well-settled common-law of conversion has always been held to cover "intangible property" that cannot exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" – which was a quotation of Corpus Juris contained in the leading California case, *Italiani v. Metro-Goldwyn-Mayer Corporation,* 45 Cal.App.2d 464, 466, 114 P.2d 370 (3rd Dist. 1941). Petitioner had also cited: *Accord,* 18 Am.Jur.2d *Conversion § 7: Tangible and Intangible Property, Generally* (2009).

As also discussed in Section IX-B, the California Court of Appeal (First District) which originally had appellate jurisdiction over all 15 of Petitioner's actions, and still has appellate jurisdiction over the remaining 11 that are not the subject of this Petition or the one that was settled, had affirmed in *Gladstone v. Hillel,* 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) that a jewelry designer's "idea" or "artistic concept" that was embodied in molds that were stolen was subject to the law of conversion and held that a proper remedy for conversion included not only the return of the stolen molds, but also that all new molds made from the stolen molds and all jewelry made from any of the molds had to be destroyed or given to the plaintiff.

U.S. District Court Judge White ignored all of this authority without even mentioning it. Instead, he cited two dicta as authority for his decision which were diametrically opposed to *Italiani, Corpus Juris, Am.Jur2d, and Gladstone:*

- *Minniear v. Tors*, 266 Cal.App.2d 495, 72 Cal.Rptr. 287 (2nd Dist. 1968) involved a "pitch" for a TV series involving underwater activities by former Navy frogmen. The "pitch" contained several bullet point" ideas for various episodes and one "bullet point" idea was a "jet pilot rescue." The mere idea for a "jet pilot rescue" was what the plaintiff alleged was stolen. However, *Minniear* is consistent with the long- and well-established case law of conversion because a mere bullet-point "idea" can "exist separate and apart from the paper on which it was written."
- *Melchior v. New Line Productions*, 106 Cal.App.4th 779, 131 Cal.Rptr. 347 (2nd Dist. 2003) involved a plaintiff's "idea" for a motion picture that was never even written down by the plaintiff who admitted that the script was authored by someone else. Accordingly, *Melchior* is also consistent with the well-established case law of conversion because an unwritten idea obviously can exist separate and apart from any paper.

On January 21, 2010, The U.S. Court of Appeals for the Ninth Circuit affirmed Judge White's decisions in cryptic unpublished opinions that cite only the two dicta and ignore all of the well-established authority to the contrary. The opinions in all three cases are identical and appear at Appendix, pp. 22a-24a.

G. Petitioner Files Solely A Petition For Re-Hearing En Banc By The Ninth Circuit And

The Original Three-Judge Panel Illegally Seizes Control Of It, Reconstrues It As A Mere Motion For Rehearing, And Then Denies The "Motion" And Closes The Docket Without Permitting Any Of The Other Ninth Circuit Judges To Learn About The Petition

On February 3, 2010, Petitioner filed in all three actions solely a Petition for Re-Hearing En Banc by the Ninth Circuit pursuant to Federal Rule of Appellate Procedure 35.

The original three-judge panel illegally seized control of the Petition, reconstrued it as a mere "motion," and then denied the "motion" and closed the docket without permitting any of the other Ninth Circuit judges to learn about the Petition. The illegal orders of the three-judge panel in the three cases are identical and appear at Appendix, pp. 4a-6a.

H. Meanwhile, Briefing Is Completed On May 13, 2010, In The De Facto "Pre-Packaged" Appeal of *Karls v. Wachovia Trust Company of California, et. al.* and *Karls v. Wells Fargo & Company*, Which Effectively Requests The California Court Of Appeal (First District) To Re-Affirm Its Decision In *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988), And Upon The Final Disposition Of Which Seven Other Related Cases Are Stayed And Two More Are Effectively Governed

On May 13, 2010, briefing was completed in the *de facto* "pre-packaged" appeal of *Karls v.*

Wachovia Trust Company of California, et. al. (Superior Court No. 487535, Appeal No. 126669) and *Karls v. Wells Fargo & Company* (Superior Court No. 486175, Appeal No. 126671) described in Section IX-B above.

As explained in Section IX-B, California Superior Court Judge effectively asked the California Court of Appeal (First District) to re-affirm its decision in *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) before the California Superior Court invested its time and resources in the trial of 15 cases.

As explained in Section IX-C, seven of the 15 related cases are stayed in California Superior Court awaiting final disposition of the appeal in *Wachovia* and *Wells Fargo*, and two more are effectively governed by their final disposition. With one having been settled, that leaves only the 3 cases which are the subject of this Petition.

Although various issues were raised at various stages of the proceedings, all of them have been abandoned by the Respondents in *Wachovia* and *Wells Fargo* except for the "Mona Lisa issue," the "Rembrandt etchings issue" and preemption by federal copyright law – all of which were decided adversely to them in *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988).

I. Extinguishing The First U.S. President Bush's Famous "1,000 Points Of Light" and Destroying The Hon. Hillary Clinton's Dream – Namely, The Education Of American Inner-City Children For Which Petitioner's Property Which Was Converted, Had Been Legally Pledged

The information contained in "The Certificate of Interested Entities or Persons" (Appendix, pp. 50a-62a) has been contained in all of Petitioner's briefs at every level in the three actions that are the subject of this Petition, since Respondents' briefs in support of their original pre-trial Motion to Dismiss defamed the Petitioner as overly-litigious.

"The Certificate of Interested Entities or Persons" itself was required to be filed on January 6, 2010, with the California Court of Appeal (First District) as part of the Opening Brief in the *de facto* "pre-packaged" appeal of *Karls v.Wachovia Trust Company of California, et. al.* (Superior Court No. 487535, Appeal No. 126669) and *Karls v. Wells Fargo & Company* (Superior Court No. 486175, Appeal No. 126671) described in Section IX-B above.

"The Certificate of Interested Entities or Persons" explains that "I Have A Dream"® Programs are "interested entities" because:

> "When I retired from Ernst & Young in 1997 at age 55 to become an investment banker, the reason communicated to my EY partners and to the sponsors of the other 177 "I Have A Dream"® Programs (most of whom were CEO's of major U.S. corporations) was to earn substantial amounts of money that could be used to fund new "I Have A Dream"® Programs.
>
> "The Record will show that after funding a modest life style and the education of my children, all of my remaining resources have been contributed to the causes of educating inner-city children and the environment.

> "In line with these two points, it continues to be my intention to contribute any proceeds from this law suit (and from the related law suits described below) to California based "I Have A Dream"® or similar programs and that the only reasons this has not already been done are that (1) I am not admitted to practice law in California and a foundation, as a juridical entity, cannot proceed pro se, and (2) in line with having already given away all of my resources to the causes of education inner-city children and the environment, I cannot afford to hire counsel for a juridical entity."

"I Have A Dream"® Programs replicate the 1981 promises by Eugene Lang to the graduating sixth graders of Harlem P.S. 121 to provide tutoring and mentoring until high-school graduation and to guarantee their college tuition. I was the founder and chief benefactor of "I Have A Dream"® - Stamford CT which served 200 children in public-housing projects and I served as the volunteer treasurer of Gene Lang's national "I Have A Dream"® Program during the 1990's. Hillary Clinton served on the National Advisory Board until the Iowa caucuses in 1991 and the first President Bush, who did substantial fund-raising for IHAD-Boston (sponsored by his nephew Jamie Bush) and for IHAD-Houston, was fond of saying the "I Have A Dream"® Programs were the inspiration for the famous "1,000 Points of Light" portion of his 1989 Inaugural Address.

The reason why the value of Petitioner's "Property" had been legally pledged to benefit American inner-city children is that there is a

plethora of cases holding that the legal consideration making such a pledge a binding contract comprises the later-in-time contributions from other donors to the same cause – and, as set forth in the quotation above, the pledge was communicated to the sponsors of the other 177 "I Have A Dream"® Programs around the country, most of whom were CEO's of major corporations, and to my 2,000 U.S. Ernst & Young partners. Indeed, my rights in these 3 actions as well as the 12 actions still pending in state court have been offered as a contribution to IHAD-San Francisco, IHAD-Los Angeles, a to-be-formed IHAD-Oakland and IHAD-National and, as anticipated, none of them are able to afford to hire counsel to represent a juridical entity.

When Barclays Capital Ltd. stole the "Property" of Petitioner, they were well aware that the "bottom line" impact of their theft was to divert funds that would have gone to benefit the education of American inner-city children to benefit instead Barclays Capital Ltd., a major U.K. investment bank, and its parent Barclays Bank PLC, a publicly-traded U.K.-based commercial bank.

The theft by Barclays Capital Ltd. from American inner-city children is no less egregious than the theft by the Nazis of fine art from Holocaust victims. After all, Barclays Capital Ltd. was robbing their victims, the American inner city children, of their future lives.

X. The Basis For Federal Jurisdiction In The Court Of First Instance

These three cases were originally brought in the California Superior Court (San Francisco County).

They were removed to the U.S. District Court (N.D. Cal.) on the basis of diversity of citizenship.

XI. Argument

A. **Re First Question Presented For Review: In a diversity-jurisdiction case, does the Ninth Circuit Court of Appeals have the power under *Erie Railroad v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) and, for example, *Freund v. Amersham Holdings, Inc.,* 347 F.3d 752 (CA9 2003), to ignore the well-settled American and Californian common law of conversion which includes the theft of "intangible property" that cannot exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" and instead, based solely on overly-broad dicta in two cases whose holdings easily fit within the well-settled rule, hold contrary to the well-settled rule – which would mean, *inter alia*, that the theft of Leonardo da Vinci's "Mona Lisa" could no longer be the subject of conversion because, absent Leonardo's "idea" or "artist's concept," the "Mona Lisa" is nothing more than a worthless piece of old canvas?**

The Demurrers of the Respondents in the U.S. District Court (N.D. Cal.) raised the question of whether an "idea" could be the subject of a common-law action for conversion.

The well-settled American and Californian common-law of conversion has always been held to cover "ideas" or "intangible property" that cannot exist "separate and apart from the paper on which it is written, or the physical substance in which it is

embodied" – which was a quotation of Corpus Juris contained in the leading California case, *Italiani v. Metro-Goldwyn-Mayer Corporation*, 45 Cal.App.2d 464, 466, 114 P.2d 370 (1941).

Petitioner also cited in his response: *Accord*, 18 Am.Jur.2d *Conversion § 7: Tangible and Intangible Property, Generally* (2009).

Petitioner also argued that if this well-settled principle is changed, then there is no civil-law remedy for the theft of fine art such as Leonardo da Vinci's "Mona Lisa" which, except for his "idea" (aka, "artist's concept"), is a worthless piece of old canvas.

Indeed, a more recent case was decided by the California Court of Appeal (First District) which originally had appellate jurisdiction over all 15 of Petitioner's lawsuits and still does except for the three actions that are the subject of this Petition and the one that was settled on December 21, 2009. *Gladstone v. Hillel*, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) held in line with the authorities cited above that an "idea" or "artist's concept" was a proper subject for common-law conversion where the molds of a designer of fine jewelry had been stolen. *Gladstone* further held that a proper remedy for conversion included not only the return of the stolen molds, but also that all new molds made from the stolen molds and all jewelry made from any of the molds had to be destroyed or given to the Petitioner.

The only authority that Respondents, the U.S. District Court and the Ninth Circuit Court of Appeals have been able to cite are dicta in two cases whose results are easily reconcilable on a factual basis with the well-settled principles just described:

- *Minniear v. Tors*, 266 Cal.App.2d 495, 72 Cal.Rptr. 287 (2nd Dist. 1968) involved a "pitch" for a TV series involving underwater activities by former Navy frogmen. The "pitch" contained several "bullet point" ideas for various episodes and one "bullet point" idea was a "jet pilot rescue." The mere idea for a "jet pilot rescue" was what the plaintiff alleged was stolen. However, *Minniear* is consistent with the long- and well-established case law of conversion because a mere bullet-point "idea" can "exist separate and apart from the paper on which it was written."
- *Melchior v. New Line Productions*, 106 Cal.App.4th 779, 131 Cal.Rptr. 482 (2nd Dist. 2003) involved a plaintiff's "idea" for a motion picture that was never even written down by the plaintiff who admitted that the script was authored by someone else. Accordingly, *Melchior* is also consistent with the well-established case law of conversion because an unwritten idea obviously can exist separate and apart from any paper.

Obviously, the quotations from *Minniear* and *Melchoir* cited by the U.S. District Court's opinion granting Respondents' Motion To Dismiss to the effect that an "idea" cannot be the subject of conversion are merely dicta because neither case involved "ideas" that could not exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" – as described by *Italiani, supra,* quoting *Corpus Juris,* the current version of *Am.Jur.2d, supra,* and the

recent decision in *Gladstone, supra,* of the California Court of Appeal with appellate jurisdiction over 11 of the 14 remaining related lawsuits.

In reconciling *Minniear, supra,* and *Melchior, supra,* with the overwhelming weight of authority, it would be more realistic to conclude that the California Court of Appeal (Second District) in both cases was really talking about a "mere idea" and carelessly omitted the word "mere."

The question might be raised whether Petitioner's Complaint sufficiently pleaded that Petitioner's "idea" could not exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" – as described by *Italiani, supra,* quoting *Corpus Juris,* the current version of *Am.Jur.2d, supra,* and the recent decision in *Gladstone, supra,* of the California Court of Appeal with appellate jurisdiction over 11 of the 14 remaining related lawsuits. This challenge must fail for each of three reasons:

- Petitioner's Complaint stated (Appendix, p. 27a for the *Goldman Sachs* Complaint) that the idea "had to be in the form of a written presentation, stating the accounting or tax benefit intended to be achieved, the transaction steps to be implemented, and the accounting or tax technical analysis" accompanied by diagrams." The description of the idea occupies 3.5 pages of the Complaint (Appendix, pp. 27a-30a) without any listing of transaction steps, any analysis of the accounting and tax issues, and any diagrams. A fair reading of these allegations is that the "idea" was incapable

of comprehension, or could not exist, separately from 3.5 pages of description plus a listing of the transaction steps, plus the technical analysis plus the diagrams.

- Moreover, the briefs of all parties at every stage have been argued as if the Complaint did describe an "idea" that cannot exist "separate and apart from the paper on which it is written."
- In addition, in the opinions granting the Respondents' Demurrers, the U.S. District Court refused to grant leave to amend the Complaint (Appendix, p. 11a for the *Goldman Sachs* Order) after citing (Appendix, p. 9a for the *Goldman Sachs* Order) *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (CA9 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (CA9 1990) for the principle that "[i]f the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile." Obviously, if an amendment were needed, it would not be futile.

The question presented is whether in a diversity-jurisdiction action the U.S. District Court and the Ninth Circuit Court of Appeals have the power under *Erie Railroad v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) to ignore the well-settled American and Californian common law of conversion – as described by *Italiani, supra*, quoting *Corpus Juris*, the current version of *Am.Jur.2d, supra*, and the recent decision in *Gladstone, supra*, of the California Court of Appeal

with appellate jurisdiction over 11 of the 14 remaining related lawsuits. Basing their decisions, instead, on the dicta in two cases that are readily reconcilable on their facts with the well-settled law where the dicta themselves probably meant "mere idea" rather than simply "idea" has tremendous ramifications:

- Not only is the First President Bush's "1,000 Points of Light" extinguished and the Hon. Hillary Clinton's Dream destroyed for millions of American inner-city children for whose education the property that Barclays Capital Ltd. stole had been legally pledged,
- But also, *inter alia*, heirs of Holocaust victims whose fine art was stolen by the Nazis will no longer be able to recover that fine art, most of which still remains in unknown private collections according to the Transcript of The News Hour With Jim Lehrer (aka, the MacNeil-Lehrer Report), *Interview On The Continuing Hunt For Art Stolen By The Nazis (Much, If Not Most, Of Which Remains In Private Collections,* November 16, 2009 (Appendix, pp. 43a-49a),
- And indeed, there will be no civil-law remedy for future thefts of fine art.

B. Re: <u>Second Question Presented For Review:</u> Is there a denial of "due process of law" under U.S. Const. Art. V when (1) the Ninth Circuit Court of Appeals' violates the Federal Rules of Appellate Procedure 35 (the original three-judge panel illegally

seized control of Petitioner's Petition for Rehearing En Banc, explicitly reconstrued it as a mere "Motion" and then dismissed the "Motion" without permitting the other Ninth Circuit judges to know anything about it) and (2) the U.S. District Court (N.D. Cal.) violates its own Civil Local Rule 7-3(d) (after Petitioner filed with the U.S. District Court the decision in 2 of the 12 virtually-identical cases that remained in California Superior Court, the U.S. District Court permitted Respondents to file an illegal supplemental brief commenting on the state-court decisions while denying Petitioner any opportunity to comment)?

The question of whether judicial proceedings in the lower courts must be conducted in compliance with various requirements in the Constitution and U.S. Code has been addressed on at least two occasions by the U.S. Supreme Court.

In *Peretz v. United States,* 501 U.S. 923, 111 S.Ct. 2661, 115 L.Ed.2d 808 (1991), the Court addressed the question of whether supervision of voir dire in a felony trial can be delegated to a federal magistrate under 28 U.S.C. § 636(b)(3).

In *Richmond Newspapers v. Virginia,* 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980), the Court addressed the question of whether a murder trial could be closed to the public and the press and, if so, under what conditions and pursuant to what procedures.

Both *Peretz* and *Richmond* demonstrate that the lower courts do not have unfettered discretion in how they conduct their proceedings.

Both *Peretz* and *Richmond* involved rights of one or more parties to the proceeding (in *Richmond* the rights of the defendant to a fair trial were being balanced against the constitutional rights of the public and press to attend the trial).

Both the U.S. District Court and the Ninth Circuit Court of Appeals in the three cases involved with this Petition, grievously violated their own rules.

The U.S. District Court violated its own Civil Local Rule 7-3(d) (the text of Civil Local Rule 7-3(d) appears in Section VIII above). The rule prohibited the Petitioner, while filing with the U.S. District Court the decision of California Superior Court Judge Curtis E.A. Karnow in two of the 12 related cases that then remained in state court, from commenting on Judge Karnow's decision.

However, following Petitioner's filing the state-court decision with the U.S. District Court, the Respondents filed an illegal supplemental brief commenting on the state-court decision in violation of Civil Local Rule 7-3(d). The U.S. District Court then cancelled the hearing that would have been Petitioner's only legal opportunity to comment on the state-court decision and simultaneously granted Respondents' Motion to Dismiss.

As explained more fully in Section IX-B above, the state-court decision was diametrically opposed in every respect to a recent opinion of the California Court of Appeal (First District) which had appellate jurisdiction over all of Petitioner's 15 lawsuits until the 3 actions involved with this Petition were removed to U.S. District Court.

Also as explained more fully in Section IX-B above, the only rational explanation (1) for

California Superior Court Judge Karnow issuing an order that is diametrically opposed to a decision of the appellate court having jurisdiction over the appeals, (2) for raising *sua sponte* an additional issue and then deciding it adversely to the decision of the appellate court having jurisdiction over the appeals if Judge Karnow really believed were correct his other orders that were diametrically opposed to the appellate court having jurisdiction over the appeals, and (3) for refusing leave to amend the Complaint with the obvious intent to compel an appeal – is that Judge Karnow intended to engineer a "pre-packaged appeal" comprising a *de facto* request to the California Court of Appeal (First District) to re-affirm its decision in *Gladstone, supra*, before the California Superior Court invested its time and resources in the trial of 15 cases.

Obviously, it was crucial for Petitioner to be permitted to explain this to the U.S. District Court before it made its ruling.

The cavalier way in which the U.S. District Court's opinion disregarded the well-settled law of conversion appears to have influenced the Ninth Circuit Court of Appeal's three-judge panel to give the appeal only cursory review. Indeed, their cryptic two-paragraph opinions in the three cases (Appendix, pp. 22a-24a) indicate they were "summarily affirming" the U.S. District Court opinions.

However, that is no excuse for the Ninth Circuit three-judge panel's subsequent violation of Federal Rule of Appellate Procedure 35. When Petitioner filed solely a Petition for Rehearing En Banc, the original three-judge panel illegally seized control of the Petition, explicitly reconstrued it as a

mere "Motion" and then dismissed the "Motion" without permitting the other Ninth Circuit judges to know anything about it. (Their illegal actions are recorded in their orders in these three cases appearing at Appendix, pp. 4a-6a.)

Obviously, Federal Rule of Appellate Procedure 35 entitled the Petitioner to the consideration of all of the Ninth Circuit judges. Presumably, they would have recognized the egregious errors of the U.S. District Court and the Ninth Circuit three-judge panel without having to trouble the U.S. Supreme Court.

These violations of court rules are a denial of "due process of law" under U.S. Const. Art. V. The ramifications of this denial of "due process of law" for American inner-city children, for heirs of Holocaust victims whose fine art was stolen by the Nazis, much of which remains in unknown private collections, and, indeed, for victims of future thefts of fine art are explained more fully in Argument A above and Argument B below.

Accordingly, they are every bit as deserving of the attention of the U.S. Supreme Court as the rights of the parties in *Peretz, supra,* and *Richmond, supra,* with regard to the conduct of their trials.

C. **Re: Third Question Presented For Review: Is there a denial of "due process of law" under U.S. Const. Art. V and, under *Bolling v. Sharpe,* 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954), "equal protection of the law" pursuant to U.S. Const. Art. V, when the futures of American inner-city children are knowingly destroyed by the admitted-in-unprivileged-communications theft by**

Barclays Capital Ltd. of property which was legally pledged to fund "I Have A Dream"® Programs (which, for all Kindergartners in an inner-city school or in a public-housing project, provide tutoring and mentoring for that group through high school graduation with a guarantee of college tuition – which the First President Bush was fond of saying was the inspiration for the "1,000 points of light" portion of his 1989 Inaugural Address since he had done extensive fund-raising for IHAD-Houston where he resided and for IHAD-Boston which was sponsored by his nephew, Jamie Bush, and on whose national Advisory Board the Hon. Hillary Clinton served for many years until the 1991 Iowa caucuses), and which meets the same "cannot exist separate and apart from paper on which it is written or the physical substance in which it is embodied" as fine art – and the Ninth Circuit Court of Appeals and the U.S. District Court (N.D. Cal.) appear to be refusing to publish their opinions so that, for example, the ability of heirs of Holocaust victims to recover the vast amount of fine art stolen by the Nazis and still contained in unknown private collections remains undisturbed?

As stated in Section VI above, there has been no publication of any of the lower court opinions in this case.

It would appear that the reason why the lower courts have not published their opinions is that they know that they are inconsistent with the well-

established law of conversion regarding "ideas" that could not exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied" – as described by *Italiani, supra,* quoting *Corpus Juris,* the current version of *Am.Jur.2d,, supra,* and the recent decision in *Gladstone, supra,* of the California Court of Appeal with appellate jurisdiction over 11 of the 14 remaining related lawsuits.

At the same time, it would appear that their refusal to publish their opinions is the desire to preserve the ability of heirs of Holocaust victims to be able to recover the vast amount of fine art stolen by the Nazis and still contained in unknown private collections and, indeed, preserve a civil law remedy for future victims of fine art theft. After all, fine art also comprises an "idea" or "artist's concept" that can not exist "separate and apart from the paper on which it is written, or the physical substance in which it is embodied."

In *Bolling v. Sharpe,* 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954), a unanimous Supreme Court found that discrimination by the Federal Government in public education provided in the District of Columbia violated not only the "due process of law" in U.S. Const. Art. V, but also violated "equal protection of the law" under U.S. Const. Art. V even though there is no "equal protection" clause in *Id.*, Art. V. The unanimous Court said:

> "But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited

> unfairness than 'due process of law,' and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process."

Refusing to permit American inner-city children to benefit from the same well-settled law of conversion as the heirs of Holocaust victims and future victims of the theft of fine art violate both "due process" and "equal protection" in an area where, under *Bolling, supra,* they overlap.

After all, heirs of Holocaust victims and future victims of the theft of fine art are only being deprived of wealth. The American inner-city children are being deprived of the value of property that would have provided them with future lives.

XII. Conclusion

For the reasons stated above, it is respectfully requested that the granting by the U.S. District Court (ND Cal.) of Respondents' Motion to Dismiss be reversed, and the actions be remanded to the U.S. District Court (ND Cal.) for further proceedings consistent, pursuant to *Erie Railroad v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), with the final disposition of the appeals currently pending in the California Court of Appeal (First District) in *Karls v. Wachovia Trust Company of California, et. al.* (Appeal No. 126669) and *Karls v. Wells Fargo & Company* (Appeal No. 126671), which are two of the 11 nearly-identical cases still pending in state court and pending final resolution of which, seven of the

11 cases are stayed in California Superior Court (San Francisco).

Although unusual to do so, Petitioner would like to comment on the fact that the U.S. Supreme Court rarely grants petitions for certiorari by pro se parties, particularly in civil litigation. In this regard, Petitioner would like to call attention to the following features of his resume (Appendix, pp. 58a-62a) which was part of his "Certificate Of Interested Entities Or Persons" (Appendix, pp. 50a-62a) that was required to be submitted with the state-court appeals in *Wachovia, supra*, and *Wells Fargo, supra:*

- Petitioner has had extensive experience making oral presentations involving "give and take" –
    - While teaching part time for many years in the graduate tax program of the N.Y.U. School of Law, and
    - While serving for two years as Chair of the A.B.A. Tax Section's International Tax Committee comprising the nation's top 300 international tax attorneys with 22 working subcommittees.

- Even more importantly, Petitioner has had extensive experience as a supplicant in making oral presentations involving "give and take"
    - While doing extensive fund-raising as volunteer treasurer of the national "I Have A Dream"® Foundation;

- While doing extensive volunteer fund-raising for the U.N. Environment Programme ("UNEP") at the personal request, because of his success raising funds for IHAD, of the United Nations Under-Secretary General for the Environment; and
- While negotiating continually with the Saudi Arab Government during its 8-year takeover (1974-1982) of the 100% ownership of Saudi oil & gas from Aramco (owned by Texaco, Chevron, Exxon and Mobil) to resolve satisfactorily many different issues that would have destroyed Aramco's U.S. tax position.

In such situations, it is a privilege to represent worthwhile causes, particularly the U.N. Environment Programme and the "I Have A Dream"® Foundation.

On behalf of the millions of American inner-city children whose futures the U.S. Supreme Court literally holds in its hands with this Petition for Certiorari, the Petitioner offers profound thanks for the Court's consideration.

Respectfully submitted,

John S. Karls, Petitioner, Pro Se
1534 Clay Street - Unit 1
San Francisco, CA 94109
917-270-1280

APPENDIX

APPENDIX – TABLE OF CONTENTS

U.S. Court of Appeals' March 17, 2010, Orders (1) Reconstruing Petitioner's Petition For Rehearing En Banc As A Motion For Reconsideration, (2) Denying The Reconstrued "Motion" By The Original Three-Judge Panel, And (3) Closing The Docket –

- *Karls v. The Goldman Sachs Group, Inc., et. al.* (09-17438).....4a
- *Karls v. Citicorp North America, Inc., et. al.* (09-17439).....5a
- *Karls v. ING Financial Holdings Corporation, et. al.* (09-17442).....6a

U.S. District Court's September 29, 2009, Orders Granting Respondents' Motion To Dismiss For Failure To State A Claim Without Leave To Amend –

- *Karls v. The Goldman Sachs Group, Inc., et. al.* (C 09-03375 JSW).....7a
- *Karls v. Citicorp North America, Inc., et. al.* (C 09-03376 JSW).....12a
- *Karls v. ING Financial Holdings Corporation, et. al.* (C 09-03377 JSW) 17a

U.S. Court of Appeals' January 21, 2010, Orders Affirming The District Court's Judgment –

- *Karls v. The Goldman Sachs Group, Inc., et. al.* (09-17438).....22a

- *Karls v. Citicorp North America, Inc., et. al.* (09-17439).....23a

- *Karls v. ING Financial Holdings Corporation, et. al.* (09-17442).....24a

Petitioner's June 15, 2009, Complaint For Conversion in *Karls v. The Goldman Sachs Group, Inc., et. al.* (California Superior Court No. 09-489452 – U.S. District Court No. C 09-03375 – U.S. Court of Appeals No. 09-17438).....25a

Wall Street Journal First-Page Article Of June 30, 2006, Which Was Attached To, And Made A Part Of, The Complaint.....31a

Editorial Note: The Complaints in *Karls v. Citicorp North America, Inc., et. al. and Karls v. ING Financial Holdings Corporation, et. al.* are virtually identical.

California Superior Court Judge Curtis E.A. Karnow's August 20, 2009, Orders in *Karls v. Wachovia Trust Co. of California, et. al.* 39a

Editorial Note: The Orders in *Karls v. Wells Fargo & Company* are identical.

Transcript of The News Hour With Jim Lehrer (aka, the MacNeil-Lehrer Report) For A November 16, 2009 Interview On The Continuing Hunt For Art Stolen By The Nazis (Much, If Not Most, Of Which Remains In Private Collections).....43a

Petitioner's Certificate Of Interested Entities Or Persons Attached To His February 3, 2009, Petitions For Rehearing En Banc In *Karls v. Goldman Sachs Group, Inc., et. al.,, Karls v. Citicorp North America, Inc., et. al., and Karls v. ING Financial Holdings Corportion, et. al.* –

- Certificate Of Pro Se Counsel Regarding Certificate Of Interested Entities Or Persons.....50a
- Certificate Of Interested Entities Or Persons (Form).....51a
- Certificate Of Interested Entities Or Persons – Additional Information.....53a
- Petitioner's Resume Which Was Part Of The Certificate Of Interested Entities Or Persons – Additional Information.....58a

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN S. KARLS	) No. 09-17438
Plaintiff – Appellant,	)
	) D.C. No. 3:09-cv-03375-
v.	) JSW Northern District
	) of California, San
THE GOLDMAN SACHS	) Francisco
GROUP, INC., et. al.	)
Defendants – Appellees	) ORDER

Before: SILVERMAN, PAEZ and BEA, Circuit Judges

Appellant's petition for rehearing en banc is construed as a motion for reconsideration en banc of the court's January 21, 2010 order summarily affirming the district court's judgment. So construed, the motion is denied on behalf of the full court. *See* Ninth Circuit Rule 27-10(a)(1); Ninth Circuit General Orders 6-11.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

FILED
MAR 17 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN S. KARLS	) No. 09-17439
Plaintiff – Appellant,	)
	) D.C. No. 3:09-cv-03376-
v.	) JSW Northern District
	) of California, San
CITICORP OF NORTH	) Francisco
AMERICA, INC., et. al.	)
Defendants – Appellees	) ORDER

Before: SILVERMAN, PAEZ and BEA, Circuit Judges

Appellant's petition for rehearing en banc is construed as a motion for reconsideration en banc of the court's January 21, 2010 order summarily affirming the district court's judgment. So construed, the motion is denied on behalf of the full court. *See* Ninth Circuit Rule 27-10(a)(1); Ninth Circuit General Orders 6-11.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

FILED
MAR 17 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN S. KARLS	) No. 09-17442
Plaintiff – Appellant,	)
	) D.C. No. 3:09-cv-03377-
v.	) JSW Northern District
	) of California, San
ING FINANCIAL	) Francisco
HOLDINGS	)
CORPORATION, et. al.	)
Defendants – Appellees	) ORDER

Before: SILVERMAN, PAEZ and BEA, Circuit Judges

Appellant's petition for rehearing en banc is construed as a motion for reconsideration en banc of the court's January 21, 2010 order summarily affirming the district court's judgment. So construed, the motion is denied on behalf of the full court. *See* Ninth Circuit Rule 27-10(a)(1); Ninth Circuit General Orders 6-11.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

FILED
MAR 17 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN S. KARLS Plaintiff – Appellant, v. THE GOLDMAN SACHS GROUP, INC., et. al. Defendants – Appellees	) No. C 09-03375 JSW)) ORDER GRANTING) DEFENDANTS') MOTION TO DISMISS) FOR FAILURE TO) STATE A CLAIM AND) FINDING AS MOOT) MOTION TO DISMISS) OR TO QUASH

Now before the Court is Defendants' (1) motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and 8(a)(2) for failure to state a claim and (2) motion to dismiss and to quash service as to a non-existent party and for lack of personal jurisdiction and defective service. The Court finds these motions appropriate for decision without oral argument. Accordingly, the Court HEREBY VACATES the hearing date of October 2, 2009. Having carefully considered the parties' papers and the relevant legal authority, the Court HEREBY GRANTS Defendants' motion to dismiss for failure to state a claim and FINDS AS MOOT Defendants' motion to dismiss and to quash for lack of personal jurisdiction and proper service.

BACKGROUND

On June 15, 2009, Plaintiff filed the complaint in this action in the Superior Court for the State of California, County of San Francisco, alleging a state law claim for conversion of an idea for certain tax treatment mechanisms. In the complaint, Plaintiff refers to and attaches an article from the *Wall Street Journal* dated June 30, 2006 reporting that the alleged idea was then a general tax structuring strategy widely used by numerous banks.

Defendants were served with a copy of the summons and complaint on June 23, 2009. On July 22, 2009, Defendants removed the action to district court on the basis of diversity of jurisdiction. Defendants then moved to dismiss on the basis that Plaintiff fails to state a cause of action as well as to dismiss for lack of personal jurisdiction and defective service.

ANALYSIS

A. Applicable Legal Standard on Motion to Dismiss.

A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. The complaint is construed in the light most favorable to the non-moving party and all material allegations in the complaint are taken to be true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). However, even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell*

Atlantic Corporation v. Twombly, 550 u.s. 544, 555 (CITING *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

Pursuant to *Twombly*, a plaintiffs (sic) must not merely allege conduct that is conceivable but must instead allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. __, 2009 WL 1361536 at *12(May 18, 2009) (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. ...When a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

B. Dismissal is Warranted

The complaint in this case indicates that Plaintiff alleges that his idea for certain tax treatment mechanisms was the subject of conversion. The description of Plaintiff's idea in his complaint and the attached *Wall Street Journal* article indicate that the idea was widely used by numerous banks and there is no allegation of an established and enforceable property interest by Plaintiff.

It is well settled law that ideas may not be the subject of conversion. *Melchior v. New Line Productions Inc.*, 106 Cal.App.4th 779, 793 (203) (holding that the "tort of conversion does not apply to ideas."); *see also Minnear v. Tors*, 266 Cal.App.2d 495, 502 (1968) (holding that "[I]n the absence of a protectible property there can be no conversion of an idea."). Ideas are not the property of any particular individual and, in the absence of a contract or other established protection of law, are free to be used commonly by anyone. *See Minnear*, 266 Cal.App.2d at 501-02.

The complaint describes no legally recognized property interest or exclusive possession of any property by Plaintiff. Plaintiff's allegations are not "enough to raise a right to relief above the speculative level" or to establish a "plausible" basis for any claims against Defendants. *See Twombly*, 550 U.S. at 555, 570. The complaint must be dismissed.

CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) without leave to amend. The Court FINDS AS MOOT Defendants' motion to dismiss or to quash for lack of personal jurisdiction and defective service. The case is dismissed and the Clerk shall close the file.

IT IS SO ORDERED.

Dated: September 29, 2009

(s)/: Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

ORIGINAL FILED
SEP 29 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN S. KARLS Plaintiff – Appellant, v. CITICORP NORTH AMERICA, INC., et. al. Defendants Appellees	) No. C 09-03376 JSW)) ORDER GRANTING) DEFENDANTS') MOTION TO DISMISS) FOR FAILURE TO) STATE A CLAIM AND) FINDING AS MOOT) MOTION TO DISMISS) OR TO QUASH

Now before the Court is Defendants' (1) motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and 8(a)(2) for failure to state a claim and (2) motion to dismiss and to quash service as to a non-existent party and for lack of personal jurisdiction and defective service. The Court finds these motions appropriate for decision without oral argument. Accordingly, the Court HEREBY VACATES the hearing date of October 2, 2009. Having carefully considered the parties' papers and the relevant legal authority, the Court HEREBY GRANTS Defendants' motion to dismiss for failure to state a claim and FINDS AS MOOT Defendants' motion to dismiss and to quash for lack of personal jurisdiction and proper service.

BACKGROUND

On June 15, 2009, Plaintiff filed the complaint in this action in the Superior Court for the State of California, County of San Francisco, alleging a state law claim for conversion of an idea for certain tax treatment mechanisms. In the complaint, Plaintiff refers to and attaches an article from the *Wall Street Journal* dated June 30, 2006 reporting that the alleged idea was then a general tax structuring strategy widely used by numerous banks.

Defendants were served with a copy of the summons and complaint on June 23, 2009. On July 22, 2009, Defendants removed the action to district court on the basis of diversity of jurisdiction. Defendants then moved to dismiss on the basis that Plaintiff fails to state a cause of action as well as to dismiss for lack of personal jurisdiction and defective service.

ANALYSIS

A. Applicable Legal Standard on Motion to Dismiss.

A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. The complaint is construed in the light most favorable to the non-moving party and all material allegations in the complaint are taken to be true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). However, even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell*

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B. Dismissal is Warranted

The complaint in this case indicates that Plaintiff alleges that his idea for certain tax treatment mechanisms was the subject of conversion. The description of Plaintiff's idea in his complaint and the attached *Wall Street Journal* article indicate that the idea was widely used by numerous banks and there is no allegation of an established and enforceable property interest by Plaintiff.

It is well settled law that ideas may not be the subject of conversion. *Melchior v. New Line Productions Inc.*, 106 Cal.App.4th 779, 793 (203) (holding that the "tort of conversion does not apply to ideas"); *see also Minniear v. Tors*, 266 Cal.App.2d 495, 502 (1968) (holding that "[I]n the absence of a protectible property there can be no conversion of an idea."). Ideas are not the property of any particular individual and, in the absence of a contract or other established protection of law, are free to be used commonly by anyone. *See Minniear*, 266 Cal.App.2d at 501-02.

The complaint describes no legally-recognized property interest or exclusive possession of any property by Plaintiff. Plaintiff's allegations are not "enough to raise a right to relief above the speculative level" or to establish a "plausible" basis for any claims against Defendants. *See Twombly*, 550 U.S. at 555, 570. The complaint must be dismissed.

CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) without leave to amend. The Court FINDS AS MOOT Defendants' motion to dismiss or to quash for lack of personal jurisdiction and defective service. The case is dismissed and the Clerk shall close the file.

IT IS SO ORDERED.

Dated: September 29, 2009

(s)/: Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

ORIGINAL FILED
SEP 29 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN S. KARLS Plaintiff – Appellant,	) No. C 09-03377 JSW)
	) ORDER GRANTING) DEFENDANTS'
v.	) MOTION TO DISMISS) FOR FAILURE TO) STATE A CLAIM AND
ING FINANCIAL HOLDINGS CORPORATION, et. al. Defendants Appellees	) FINDING AS MOOT) MOTION TO DISMISS) MOTION TO DISMISS)

Now before the Court is Defendants' (1) motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and 8(a)(2) for failure to state a claim and (2) motion to dismiss and to quash service as to a non-existent party and for lack of personal jurisdiction and defective service. The Court finds these motions appropriate for decision without oral argument. Accordingly, the Court HEREBY VACATES the hearing date of October 2, 2009. Having carefully considered the parties' papers and the relevant legal authority, the Court HEREBY GRANTS Defendants' motion to dismiss for failure to state a claim and FINDS AS MOOT Defendants' motion to dismiss and to quash for lack of personal jurisdiction and proper service.

BACKGROUND

On June 15, 2009, Plaintiff filed the complaint in this action in the Superior Court for the State of California, County of San Francisco, alleging a state law claim for conversion of an idea for certain tax treatment mechanisms. In the complaint, Plaintiff refers to and attaches an article from the *Wall Street Journal* dated June 30, 2006 reporting that the alleged idea was then a general tax structuring strategy widely used by numerous banks.

Defendants were served with a copy of the summons and complaint on June 26, 2009. On July 22, 2009, Defendants removed the action to district court on the basis of diversity of jurisdiction. Defendants then moved to dismiss on the basis that Plaintiff fails to state a cause of action as well as to dismiss for lack of personal jurisdiction and defective service.

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A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. The complaint is construed in the light most favorable to the non-moving party and all material allegations in the complaint are taken to be true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). However, even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell*

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CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) without leave to amend. The Court FINDS AS MOOT Defendants' motion to dismiss or to quash for lack of personal jurisdiction and defective service. The case is dismissed and the Clerk shall close the file.

IT IS SO ORDERED.

Dated: September 29, 2009

(s)/: Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

ORIGINAL FILED
SEP 29 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN S. KARLS	) No. 09-17438
Plaintiff – Appellant,	)
	) D.C. No. 3:09-cv-03375-
v.	) JSW Northern District
	) of California, San
THE GOLDMAN SACHS	) Francisco
GROUP, INC., et. al.	)
Defendants – Appellees	) ORDER

Before: SILVERMAN, PAEZ and BEA, Circuit Judges

A review of the record and the response to the November 16, 2009 order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 639 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

FILED
JAN 21 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN S. KARLS	) No. 09-17439
Plaintiff – Appellant,	)
	) D.C. No. 3:09-cv-03376-
v.	) JSW Northern District
	) of California, San
CITICORP OF NORTH	) Francisco
AMERICA INC., et. al.	)
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FILED
JAN 21 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
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JOHN S. KARLS	) No. 09-17442
Plaintiff – Appellant,	)
	) D.C. No. 3:09-cv-03377-
v.	) JSW Northern District
	) of California, San
ING FINANCIAL	) Francisco
HOLDINGS	)
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Accordingly, we summarily affirm the district court's judgment.

FILED
JAN 21 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Summons Issued
Filed
San Francisco Superior Court
June 15 2009
Gordon Park-Li, Clerk
By: Elias Rett, Deputy Clerk

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Superior Court of California – County of San Francisco

John S. Karls	)	Case CGC-09-489452
	)	
vs.	)	
	)	**Plaintiff's Complaint for**
The Goldman Sachs	)	**Conversion**
Group, Inc.,	)	
	)	Judge_____
and	)	
	)	Department _____
The Goldman Sachs	)	
U.S.-Tax "Consolidated	)	Amount Demanded
Group" of Corporations	)	Exceeds $10,000

Plaintiff's Complaint for Conversion

The Plaintiff, John S. Karls, is a California resident, residing at 1534 Clay Street – Unit 1, San Francisco, CA 94109.

The Goldman Sachs U.S.-Tax "Consolidated Group" of Corporations is defined by 26 U.S.C. § 1504 and has been an unincorporated association acting as a common-law partnership.

The Goldman Sachs U.S.-Tax "Consolidated Group" of Corporations was formed by its members for the purpose of reducing their combined U.S. income tax liability.

The June 30, 2006 issue of the Wall Street Journal reported in the attached article on its front page, first column, that a number of companies have used intellectual property (hereinafter "The Property") which the Wall Street Journal reports was both confidential and proprietary.

The Property is indeed confidential and proprietary.

The Property belongs to the Plaintiff.

A detailed description of The Property comprises the last three pages of this Complaint.

The Goldman Sachs U.S. Tax "Consolidated Group" of Corporations has converted The Property.

Moreover, The Goldman Sachs Group, Inc. as agent for all of the members of The Goldman Sachs U.S.-Tax "Consolidated Group" of Corporations caused The Goldman Sachs U.S.-Tax "Consolidated Group" of Corporations to convert The Property.

The Plaintiff requests compensatory damages for the conversion of The Property by the Defendants equal to the value of the property to The Goldman

Sachs U.S.-Tax "Consolidated Group" of Corporations.

The value of The Property to The Goldman Sachs U.S.-Tax "Consolidated Group" of Corporations is the amount of foreign tax credit that The Goldman Sachs U.S.-Tax "Consolidated Group" of Corporations has been and will be able to claim as a result of its use of The Property.

The Goldman Sachs Group, Inc. was reckless in its failure to obtain the permission of the Plaintiff to use The Property.

Accordingly, the Plaintiff requests, in addition to the no-fault compensatory damages equal to the value of the converted Property, punitive damages equal to three times the compensatory damages to be added to the amount of the compensatory damages.

The Plaintiff requests a Jury Trial of all factual issues.

Detailed Description of The Property

In general, The Property was a "Product" defined as "an idea" the Plaintiff invented for which "with development and implementation" third parties would be willing to provide a financial reward, in addition to which "a Product shall include not only the initial idea but any improvements to that Product" that may be developed.

Also in general, the Product had to be "in the form of a written presentation, stating the accounting or tax benefit intended to be achieved, the transaction steps to be implemented, and the accounting or tax technical analysis" accompanied by diagrams.

In particular, The Property involved in this lawsuit was a typical Product which takes advantage

of different views that the tax authorities of two different countries have regarding an entity (e.g., corporation or partnership), an instrument (e.g., debt or equity), the nature of an investment (e.g., lease or ownership), etc., etc. — each country supremely confidant that it has the "Holy Grail" and impervious to the views of any other country. (Typical international tax advisers merely look out for "rattlesnakes" — two different countries taxing the same thing, while good international tax advisers look out for opportunities in which no country taxes something because of their divergences in their respective "Holy Grails").

Specifically, The Property was the idea that two different groups of companies could claim a tax advantage from combining the separate income taxes that each would otherwise pay on a portion of their income into a single tax for which both could claim benefit.

Each of the two different groups of companies would place their respective shares of income upon which they wanted to pay a single combined income tax, rather than two separate income taxes, into a joint structure.

The joint structure would be subject to income tax in two different jurisdictions, one of which would grant a credit (or tax reduction) for the tax paid to the other jurisdiction.

To accomplish this, the joint structure could be a dual-resident company (for example, a US-incorporated entity that was "minded and managed" in a British Commonwealth country as a result of which it would be treated the same as an entity incorporated in the British Commonwealth country), a dual-incorporated company (for example, a non-

U.S. entity that is later incorporated in Delaware without surrendering its original non-U.S. incorporation status), a hybrid entity (for example, an entity whose income is taxed in one country because that country treats it as a corporation, but whose income is taxed in another country because the second country views the entity as a pass-through partnership whose income is taxable to the partners), etc., etc.

The way that the two sets of income taxes are combined into a single tax (before credit) rather than merely adding to each other is with hybrid instruments.

The instrument representing the investment of one company is viewed as equity by that company's income tax jurisdiction and as debt by the taxing jurisdiction of the other company.

The instrument representing the investment of the second company is viewed as equity by that company's income tax jurisdiction and as debt by the taxing jurisdiction of the first company.

For example, a British based bank and a US-based bank each put $10 billion into a US-incorporated entity ("NewCo") which will last at least 5 years so that the US Internal Revenue Service will view (together with other features of the instrument) the US bank's investment in NewCo as equity while the UK Inland Revenue views that investment as debt. The investment of the British-based bank in NewCo is structured so that it will be viewed as equity by the UK Inland Revenue and as debt by the US Internal Revenue Service.

For ease of illustration, assume the interest rate upon inception in the early 2000's was 10% so each bank would have earned $1 billion on its $10

billion of cash in the absence of any action. Each has put their $10 billion into Newco which now earns the combined $2 billion of economic income. However, UK Inland Revenue views NewCo as having earned $2 billion less "interest" paid to the US-based bank. So it taxes what it perceives as NewCo's net income (say $1 billion) at its income tax rate (say $300 million). And the UK-bank is free to pocket its share of income from NewCo (which the UK Inland Revenue views as a wholly-owned British-taxable subsidiary of the British-based bank) with no further income tax liability.

Meanwhile, the US Internal Revenue Service views NewCo as having earned $2 billion less "interest" paid to the UK-based bank. So it taxes what it perceives as NewCo's net income (the other $1 billion of economic income in this example) at its income tax rate (say $350 million) and grants a foreign tax credit for the UK income tax paid by NewCo ($300 million) for a net US income tax of $50 million.

The bottom line in this numerical example is that both the UK-based bank and the US-based bank have been able to reap the full economic advantage of the same $300 million of UK income tax, an overall tax savings compared with the alternative of doing nothing.

DATED: June 15, 2009

Respectfully submitted,

/s/: John S. Karls
John S. Karls, Plaintiff, Pro Se

Editorial Note: There follows an article from the Wall Street Journal, a photocopy of which was attached to, and made a part of, the complaint.

The Wall Street Journal
Friday, June 30, 2006 – Page 1

Border Crossing
How A U.K. Banker Helps U.S. Clients Trim Their Taxes
Deals Devised by Roger Jenkins Of Barclays Capital Lift Own Firm's Fortunes, Too
Paid Once, Credited Twice

By Carrick Mollenkamp And Glenn R. Simpson

London – At Barclays PLC, a British bank steeped in 300 years of tradition, the work of a team led by banker Roger Jenkins is far from traditional.

For instance, in 2003 his team set up a company with no employees, no products and no customers – just a mailing address in Delaware and a slate of British directors, mostly employees of his office. It was co-owned by Barclays and U.S. bank Wachovia Corp.

The following year, according to documents filed in the United Kingdom, the jointly owned company had $317 million in profits. It paid U.K. taxes on them. Barclays and Wachovia were both able to claim credit for paying all of the tax.

This was one of at least nine such structures Mr. Jenkins and his team have set up involving U.S. banks, which also included Wells Fargo & Co. and Bank of America Corp. The complex transactions

involve a strategy called tax arbitrage, which plays off one nation's tax system against another to reduce the banks' tax bills.

Barclays is the leader in this esoteric field. It collects hundreds of millions of dollars in revenue generated by Mr. Jenkins's group. His team of lawyers and bankers has helped turn Barclays from a sleepy Main Street lender into an investment-banking power.

Critics of tax arbitrage are blunt about it. "This is just a complete and utter construct to get around the rules at both ends," says Richard Murphy, an accountant and professor who works with a London nonprofit called Tax Justice Network and has consulted for the U.K. government on financing.

The banks say the cross-border deals have been cleared by both U.S. and U.K. regulators and the regulatory review process is rigorous. Barclays says the transactions aren't designed mainly to reduce taxes. It says Mr. Jenkins's group generates a variety of strategies for corporate clients to lessen risk, maximize profits and fund balance sheets. Says Mr. Jenkins: "I run a structured capital-markets business which does a bunch of different things, and in there is tax efficiency, as you would expect."

But regulators and politicians in both countries are paying greater attention to tax arbitrage. The U.S. and U.K., along with Australia and Canada, have formed a body designed to combat cross-border tax abuses. The British government took a step against tax arbitrage last year by adopting a law that disallowed certain strategies in the U.K. and gave regulators more time to rule on

deals when proposed. In the U.S., Internal Revenue Service Commissioner Mark Everson told the Senate this month that his agency is focusing on ways that financial institutions are structuring deals abroad to avoid taxes.

Mr. Jenkins's success has made him one of the highest-paid executives at Barclays, which rewards him in unusual ways. Besides his salary and bonus, estimated to total in the millions of dollars annually, Barclays several years ago invested a total of about $40 million in two Jenkins personal holding companies, according to U.K. documents. One of Mr. Jenkins's companies bought a stake in a swimwear company his wife is involved in and also owns a warrant to invest in an energy-bar company run by his brother.

Mr. Jenkins, 50 years old, is known by people who work for him as relentless about the details of deals, with a competitive drive he showed early in life in Scotland. At Edinburgh Academy, he and his brother, David, put up school running records that still stand. "My brother and I are still, 40 years on, faster by about 10 yards than any other kid who has ever run there," Mr. Jenkins says. The school's alumni secretary confirms their track skills. David was the faster: He won a sliver medal at the 1972 Olympics.

The son of an oil-refinery manager, Mr. Jenkins joined Barclays as a trainee in 1978, left for another bank, then returned in 1994 to set up a group to advise companies on tasks such as risk management and leasing.

It was a critical time at Barclays. Founded by Quakers in the 1600's, the bank had its headquarters on the same street in the City of

London financial district for almost 300 years. But by the mid-1990's, change was sweeping through banking, with some competitors branching out broadly into financial and investment services.

In 1966, Barclays's investment-banking unit hired an American executive of Credit Suisse, Robert Diamond Jr., who broadened the unit's horizons and has helped turn it into a major European investment bank. Meanwhile, Mr. Jenkins was assembling his group, known as Structured Capital Markets. Reaching beyond bankers, Mr. Jenkins also staffed this with people like Iain Abrahams, a London tax attorney who today is his chief lieutenant.

The investment-banking unit, Barclays Capital, soon faced a rough patch. It had an operating loss of $440 million in 1998, the year Russia devalued its currency and defaulted on part of its debt. But growing profits from Mr. Jenkins's teamed softened the blow.

In 2000, Wells Fargo proposed a transaction to the U.S. Office of the Comptroller of the Currency that became the blueprint for the cross-border deals Barclays began to do. Wells Fargo, based in San Francisco, sought the bank regulator's clearance to set up a unit in the Cayman Islands "to achieve further efficiency in funding." The OCC approved it. A spokesman for the agency says it was aware the transaction had tax implications but had no reason to think it was improper.

To pass muster with the IRS, transactions must have a business purpose other than shaving taxes. At Wells Fargo, "all transactions serve a bona fide business purpose and benefit ...," says the bank's controller, Richard Levy.

The financial filings of Wells Fargo, which has set up numerous cross-border structures including at least one with Barclays, disclose little about them. Mr. Levy says they weren't big enough to be material. Other banks involved in these deals also make little mention of them in their filings. When the Wall Street Journal asked the OCC for documents on the transactions, several banks opposed their release, citing client confidentiality and trade secrets.

Barclays doesn't trumpet the Jenkins team's success, beyond occasional mention in its annual reports. Mr. Jenkins says talking about it could tip off competitors and jeopardize client confidentiality. Barclays declined to give details on how the cross-border structures work.

But some details of the 2003 Barclays-Wachovia transaction can be learned from U.S. and U.K. corporate and regulatory filings. These include OCC records, released in redacted form after an appeal by the Journal.

The structure at its heart was called August Funding LLC. British records show that in May 2003, members of Mr. Jenkins's group incorporated Augustus in Delaware. Its U.S. address: the office of a Wilmington clerical firm that lets thousands of shell companies use its address.

Directors of Augustus were eight executives in Britain, six of them members of Mr. Jenkins's group and two of them Wachovia employees. Board meetings take place at Barclays offices in Canary Wharf, U.K. records show. Duplicate books and records are kept there and in Charlotte, N.C., Wachovia's base.

Incorporation in Delaware established a U.S. residency for Augustus. Having a London address as well, plus British directors, made the business the corporate equivalent of a dual passport holder: incorporated in the U.S., but a U.K. resident for tax purposes. Wachovia owns 49% of Augustus. Barclays owns 51%, via two intermediary companies that have no employees.

Wachovia's correspondence with the OCC to set up such an entity said the North Carolina bank could earn a higher return this way than through other investments with a similar level of risk. One document said the deal would provide its partner British bank "with certain tax benefits under United Kingdom law."

Augustus was funded with more than $6 billion, the bulk of it contributed by Wachovia. In its first full year, 2004, Augustus reported $317 million in pretax profits from assets such as Danish mortgage securities and U.S. Treasurys.

Augustus had to pay U.K. taxes on this income because of its British tax residency. The tax was $94 million.

Augustus's owners, Barclays and Wachovia, both were able to claim credit at home for a tax payment. And thanks to the elaborate structure and cash flows involved in the deal, some of which remain undisclosed, each co-owner could take credit for a full $94 million payment, say people familiar with how such transactions work. In effect, the $94 million payment got claimed twice.

When it brought its share of the profits back to the U.S., Wachovia paid an additional amount of tax – about $16 million – to the Internal Revenue Service to reflect the fact that U.S. corporate tax

rates are slightly higher than U.K. tax rates. Wachovia noted that foreign-tax credits are common.

Barclays, asked about these accounts of the transaction, said they were "materially inaccurate," but declined to be specific, citing client confidentiality. At Wachovia, a spokeswoman said the bank has "complied with all applicable laws and regulations," including tax rules.

The outline for a similar, prospective Barclays deal with another U.S. bank estimated that it would produce savings of hundreds of millions of dollars over five years, after which it would end. In some deals, the Jenkins team has worked with a number of law and accounting firms, including KPMG LLP. The accounting firm says it submitted to the IRS all transactions involving U.S. banks and Barclays.

Barclays Capital, the investment-banking unit that includes Mr. Jenkins's team, now contributes about a quarter of its parent bank's pretax profit, up from 18% in 1999. In a move symbolic of the bank's shift away from tradition, it has moved from its longtime home in the City of London to the modern Canary Wharf complex east of London. And as Mr. Jenkins's team continued to do innovative deals, Barclays has augmented his compensation in a novel way.

A few years ago, the bank acquired about $9 million of preferred shares in a personal holding company of his. In another instance, it invested about $30 million in preferred shares in another Jenkins personal holding company. Barclays's board approved the purchases under a plan designed to retain key executives, said a bank spokesman. The arrangement was that if Mr. Jenkins stayed three

years, Barclays's shares in the personal companies would become his.

One holding company, called D-Sol Systems Ltd., owns a warrant to buy shares in a California nutrition-bar maker owned by David Jenkins, the banker's Olympic-medalist brother. David Jenkins started the company, Next Proteins Inc., in 1989 after serving several months of a seven-year prison sentence for involvement in a steroid-smuggling ring. He didn't return calls seeking comment.

D-Sol also bought 49% of a company that makes the Melissa Odabash line of women's swimwear, where Roger Jenkins's wife, Diana, is a partner and helps on public-relations and design.

Mr. Jenkins declined to comment on D-Sol or Barclays's investment in it. Barclays said its investment in the Jenkins personal holding companies has ended, the bank's shares having been transferred to Mr. Jenkins in accordance with the three-year arrangement.

The Jenkinses have owned homes in Malibu, Calif., as well as London. The society magazine Tatler last year included them on a list of famous guests at an event. A New York Times Magazine feature last year about vacationing in Aspen, Colo., pictured Mrs. Jenkins, 35, adorned with what it said was a $12,000 mink.

Mrs. Jenkins appears to share with her husband an appreciation of tax issues. While at London's City University in 1999, school records show, she wrote a paper called "Minimizing Withholding Taxes in a Multinational Corporate Structure."

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JOHN S. KARLS, Plaintiffs (sic)	) CASE NO. CGC-09-487535
vs.	) Order Granting) Wachovia's Demurrer
WACHOVIA TRUST CO. OF CALIFORNIA, ET. AL. Defendants.	) Order Denying) Wachovia's Request for) Judicial Notice

Defendant Wachovia's demurrer came on regularly for a hearing on Friday, August 14, 2009. Plaintiff Karls represented himself and defendants were represented by counsel.

I have considered the papers filed in connection with Wachovia's request for judicial notice. I have considered the arguments of the parties. For the reasons stated in open court and as supplemented here, the motion for judgment on the pleadings is granted.

Karls requested further briefing on copyright preemption issues, and accordingly the parties agreed to, and I directed, that further such briefing could be made up to August 19, 2009, at which time the matter would be deemed submitted. The parties did file those submissions, and I have considered them.[1]

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[1] Below, I refer to Karls' closing memo, filed August 19, 2009 as Plaintiff's Closing Memorandum

1. Request for Judicial Notice.

As noted at argument the materials submitted for judicial notice are irrelevant to the pending motion and accordingly the request is denied.

2. Judgment on the pleadings.

A fair reading of the current complaint shows that Karls alleges that his idea for certain tax treatment mechanisms was the subject of conversion. Ideas may not be the subject of conversion. *Melchior v. New Line Productions, Inc.*, 106 Cal.App.4th 779 (2003). Conversion of such an intangible property in any event is subject to the two year statute of limitations which all parties concede has run. C.C.P. § 339(1). Finally, as Karls agreed, he still has full access to the idea, and so no 'substantial interference' with it has occurred, or is alleged, and accordingly the tort of conversion cannot be made out and is not pleaded.

In opposition papers, elaborated at argument, and supplemented by his August 19 submission, Karls now refutes the notion that he sues for the conversion of an idea. Rather, he suggests that the idea, *as embodied in tangible medium*, was the subject of unauthorized copying. I take this as an offer to file an amended complaint to cure the defects pointed out by Wachovia. Karls makes an analogy to the unauthorized duplication of a Rembrandt print. Thus Karls says the three year (tangible property), rather than two year, statute of limitations applies, which would permit the action to proceed.

But the wrong so alleged is not comfortably cabined by the tort of conversion. This is so because unauthorized copying is covered by federal copyright

law. There, unauthorized copying or duplication states a cause of action. 17 U.S.C. § 106. State claims based on (i) works of expression fixed in a tangible medium, and (ii) an asserted right to prevent others from making copies, are pre-empted by the Copyright Act. *Kabehie v. Zoland,* 102 Cal.App.4th 513, 520 (2002); *Balboa Ins. Co. v. Trans Global Equities,* 218 Cal.App.3d 1327, 1339-1340 (1990).

Karls' recent submission cites the "extra element" test often attributed to Nimmer[2] to the effect that if the state allegations include an element 'extra' or in addition to those that make out a copyright claim, the state claim is not preempted. Here, Karls suggests that that extra element is wrongful possession of the item. Plaintiff's Closing Memorandum at 3-4. He may be under the impression that merely alleging conversion *ipso facto* removes the claim from the purview of preemption. Not so. Karls made it clear at the hearing, including by reference to the wrongful making of copies of etchings, that his proposed complaint would concern the wrongful copying of an item, the original of which he retains: this is a copyright claim, whether or not he describes it as conversion.[3]

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[2] *See generally* 1 NIMMER ON COPYRIGHT (2008).

[3] *Maheu v. CBS, Inc.*, 201 Cal.app.3d 662, 672 (1988) is instructive. It distinguishes "mere temporary interference with property rights, rather than dominion and control to the complete exclusion of the author" and so distinguishes the latter – a true state conversion claim – from the former, copying the manuscript, which is a federal copyright claim. Karls does not claim his "complete exclusion" but rather the making of copies.

Alas, this Court may not hear such cases; exclusive jurisdiction is vested in the federal courts. 28 U.S.C. § 1338(a). Accordingly, there is nothing to be gained by permitting Karls to amend here, and for these reasons, the demurrer is granted without leave to amend.

Dated: August 20, 2009 /s/: Curtis E.A. Karnow
Judge of the Superior Court

FILED
Superior Court of California
County of San Francisco
AUG 20 2009
GORDON PARK-LI, Clerk
BY: Donna D. Vegas, Deputy Clerk

The MacNeil-Lehrer Report
(aka The PBS News Hour With Jim Lehrer)

Official Transcript – November 16, 2009

Excerpt Regarding – 'Monuments Men' Explores Hunt for Art Stolen by Nazis

Jeffrey Brown talks to author Robert M. Edsel about his new book "The Monuments Men: Allied Heroes, Nazi Thieves and the Greatest Treasure Hunt in History."

JIM LEHRER: And finally tonight: a tale of war, art, and an unusual group of soldiers. Jeffrey Brown has our conversation.

JEFFREY BROWN: It was a drama that largely took place behind the scenes of the great sweep of destruction, violence and final triumph of the Second World War: the systematic looting of art by Nazis and the response and rescue effort by the U.S. and its allies. Much of the work was undertaken by a small group that came to be known as the Monuments Men. And their story is told in a new book by that title. Its author, Robert Edsel, joins me now. Welcome to you.

ROBERT EDSEL, author, "The Monuments Men": Thank you.

JEFFREY BROWN: To help set up the story, describe the loot -- let's talk about the looting first. I said it was systemic. It was a vast scale. How did the Nazis go about it?

ROBERT EDSEL: Well, this is a scale we have never seen. Hitler was determined to build this museum in his hometown of Linz. It was going to be called the Fuhrer Museum, the greatest museum of the world's greatest works of art. And, of course, they had to have them. They are in these other countries. And they went about systematizing and changing the laws, going about confiscations, not just of Jews', but also other wealthy collectors. And it was systematized from the standpoint of developing lists. These different parts of the Nazi troops were in countries months before the invasion making lists of these works of art they intended to confiscate.

JEFFREY BROWN: So, in the midst of a war, you wouldn't think that rescuing art would be a high priority with so much going on. How did this effort get under way? How big did it become?

ROBERT EDSEL: Well, I think the great vision was on the part of a small handful of men and women in this country who, years before the bombing of Pearl Harbor, were in touch with museum colleagues in museums in Europe. And they understood from their colleagues about Hitler's rise to power, how art was being used as a weapon of propaganda. And I think they had the vision to see, at some point in time, the United States was going to become involved in this war. Within weeks after the bombings in Pearl Harbor, museum officials met at the Metropolitan Museum of Art in New York City. And they discussed the protection of works of art in this country. But I think, in the months that followed, they could see, the great risks were to the great

Western civilization cultural treasures that lay in the path of war.

JEFFREY BROWN: Now, I said this was a small group of people who became known as the Monuments Men. Some of them came from arts backgrounds, restoration, preservation, and all. There was systematic looting. Then they systematically went about, it sounds like from your book, to try to get it back.

ROBERT EDSEL: As much as they could do this. I mean, it really was an experiment, an untried experiment. The Monuments Men somewhat of a misnomer. They were museum directors, curators, artists themselves who volunteered for service, average age about 40 years old, most with accomplished careers, many with families. They had every reason to not volunteer and go do this. But they felt it was important to try and preserve the great cultural treasures of Western civilization, lest it become a stain, not just on the United States, but the Western allies, for all time, if the great treasures were destroyed. Their focus initially was on structures -- hence the name Monuments Men. But, as they got to Europe, the more and more, they began looking for the missing works of art that weren't in the museums.

Saving the Mona Lisa

JEFFREY BROWN: And we are talking literally about great treasures of Western civilization. ROBERT EDSEL: Yes, these are not minor artists.

JEFFREY BROWN: This is the Mona Lisa. We have a photo here.

ROBERT EDSEL: The Mona Lisa was one of 400,000 works of art evacuated from the Louvre in a matter of a few weeks, trying to keep them out of war's path. Of course, initially, the concern was to try to get them out of way of damage from bombings and fires. But, in the course of time, it was to try and keep them away from the Nazis in the theft that went on. So, the Monuments Men arrived on the ground. There were no more than a dozen Monuments Men in all of Northern Europe responsible for covering a vast, vast area. There was a separate group of Monuments Men in Italy charged with this awesome responsibility, really no playbook, if you will. Many of them were hitchhiking their way across Europe. They were pathetically resourced, but they were empowered by this monumental order by General Eisenhower that said, we will protect cultural treasures, so much as war allows. And that really was a sea change in how this army went about fighting a war on the one hand and trying to mitigate damage to cultural treasures.

JEFFREY BROWN: There are so many amazing people and stories here. Is there one favorite character of yours in all of this that could help encapsulate...

ROBERT EDSEL: Well, I -- you are right. I mean, there are -- you have got the future director of the Metropolitan Museum of Art on the front cover of our book standing on the steps of the Castle of Neuschwanstein in southern Bavaria, where they

discovered many thousands of works of art stolen from collectors in France. George Stout, who really was the brainchild of this operation, who was a pioneer in the development of conservation, who had the vision to see this was going to be necessary. I think one of the fellows that we enjoy so much getting to know, a living Monuments Man, is a fellow named Harry Ettlinger, who, as a 13-year-old boy, was the last Jew Jewish boy to have a bar mitzvah in Karlsruhe, Germany. His family fled Germany and came to the United States. He went to school here, worked two jobs, and was drafted into the Army when he was 18, found himself on a truck headed off for the Battle of the Bulge, on his 19th birthday, was pulled off the truck. He didn't know why, and later found out they were pulling him into the Monuments Men section because he was a native German speaker. So, here is this 19-year-old returning to his country of origin, his old country, to fight a war on behalf of his new country.

Unrecovered art

JEFFREY BROWN: Now, you mentioned General Eisenhower. We have a photo of him looking at some of the works that were recovered. So much was recovered, but a lot was not, right?

ROBERT EDSEL: Well, that's right. So many of the things that were recovered -- the Monuments Men stayed in Europe for more than six years after the war, by 1951, had returned more than five million cultural objects, library books, stained glass, church bells, and hundreds of thousands of works of art, to the countries from which these things had been

stolen. This photo of General Eisenhower, General Patton, and General Bradley in a salt mine in Merkers, one of thousands of places these monuments officers found works of art hidden by the Nazis, including so many of the works from their own German museums. But, as you point out, there are still hundreds of works of art, over a million when we get into documents, musical manuscripts, that are missing today. They are with people that liberated some of these documents or treasures. They are with armies of all sides, displaced persons. And I believe, over the next five to 10 years, as we see the World War II generation pass, many of these things that are today in basements and attics hanging on walls are going to begin to surface. It is one of the things we hope at the Monuments Men Foundation we can play a role in helping illuminate the path home for them.

Protecting art from war

JEFFREY BROWN: You know, you mentioned one of them who went on to become the head of the Metropolitan Museum. Another was Lincoln Kirstein, who went on to co-found the New York City Ballet, one of the great art patrons in post-World War II. And, yet, I mean, a lot of -- so, some of these people went on to very famous careers, yet, their story is so little known. And that is what is kind of striking about what they did during the war. Why is that, do you think?

ROBERT EDSEL: Well, I think there are some people that wish this story would go away. I think there's different people that have agendas here.

There's a lot of works of art that are still missing. As I mentioned, some are in private collections. Some are in museums around the world. I think, when we get into the topic of Nazi looting, it is a very sensitive topic, even to this day.So, that is one of the things we try and break down with the Monuments Men Foundation is to discuss the story of these heroes and the role model that they can be, not just from World War II, but also how their work can serve to avoid some of the aftermath as we saw in the looting of the National Museum of Iraq in Baghdad. How is it that, in a world war with a dozen people empowered by General Eisenhower, we could do so well as a nation and as Western Allies, and we couldn't do better in a small -- complicated, but small regional conflict?I think it's important to understand I think it worked during World War II because the orders came from the top. They were empowered by President Roosevelt, orders issues by General Eisenhower. And I think that is an important model for us. We should never lower the bar on the protection of cultural treasures during war.

JEFFREY BROWN: All right. The book is "The Monuments Men," a remarkable story from World War II. Robert Edsel, thank you very much.

ROBERT EDSEL: Thank you.

CERTIFICATE OF PRO SE COUNSEL

I hereby certify under penalties of perjury that attached hereto is the "Certificate of Interested Entities Or Persons" that was required to be filed on January 6, 2010, with the Opening Brief of the Plaintiff/Appellant in the Court of Appeals of the State of California - First District in *Karls v. Wachovia Trust Company of California, et. al.* (A126669) and *Karls v. Wells Fargo & Company* (A126671).

DATED: February 3, 2010

Respectfully submitted,

/s/: John S. Karls
John S. Karls
Pro Se Counsel - Plaintiff/Appellant

Court of Appeal
State of California
First Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS [Prescribed Form]

Court of Appeal Case Number: A126669+671
Division 1

Case Name: *Karls v. Wachovia Trust Co. of Cal., et. al.* + *Karls v. Wells Fargo & Company*

Please check the applicable box:

( ) There are no interested entities or persons to list in this Certificate per California Rules of Court, rule § 8.208(d)(3).

(X) Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1. The "I Have A Dream"sm Foundation, etc.	Please see attached statement.
2. Barclays Capital Ltd. & Barclays Bank PLC	Please see attached statement.
3. 13 Other International Banking Groups	Please see attached statement.
4.	

Please attach additional sheets with Entity or Person information if necessary

/s/: John S. Karls
Signature of Attorney/Party Submitting Form

Printed Name:	John S. Karls, Pro se
Address:	1534 Clay Street - Unit 1 San Francisco, CA 94109
State Bar No:	N/A - Pro Se
Party Represented:	Plaintiff - Appellant

Certificate of Interested Entities or Persons – Additional Information

Karls v. Wachovia Trust Company of California, et. al. – A126669
Karls v. Wells Fargo & Company – A126669

Interested Entity or Person No. 1 = The "I Have A Dream"® Foundation, etc.

During the 1990's, I was the sponsor and chief benefactor of the "I Have A Dream" ® Program of Stamford CT –

- IHAD-Stamford was patterned on self-made multi-billionaire Eugene Lang's promise in 1981 to the graduating sixth graders of Harlem PS 121 that he would guarantee their college tuition if they stayed in school – he then provided tutoring and mentoring until they graduated from H.S.

- IHAD-Stamford was one of 178 such programs in 51 American cities in the 1980's and 1990's – providing tutoring and mentoring for inner-city children as they progressed from third-grade through HS graduation and guaranteeing their college tuition – typically transforming single-digit HS graduating rates to 65% - 70%.

- IHAD-Stamford served 200 inner-city children in three public-housing projects.

During the 1990's, I also served as the Volunteer Treasurer of Eugene Lang's National "I Have A Dream"℠ Foundation

As detailed on the attached resume and at the beginning of my Opposition Brief in the Superior Court in a section entitled "Future Party At Interest and Cal. Code Civ. Proc. § 367" and at the end of this attachment –

1. When I retired from Ernst & Young in 1997 at age 55 to become an investment banker, the reason communicated to my EY partners **and to the sponsors of the other 177 "I Have A Dream"℠ Programs (most of whom were CEO's of major U.S. corporations)** was to earn substantial amounts of money that could be used to fund new "I Have A Dream"® Programs.

2. The record will show that after funding a modest life style and the education of my children, all of my remaining resources have been contributed to the causes of educating inner-city children and the environment.

3. In line with these two points, it continues to be my intention to contribute any proceeds from this law suit (and from the related law suits described below) to California-based "I Have A Dream"℠ or similar programs **and that the only reasons this has not already been done are (1) that I am not admitted to practice law in California and a foundation, as a juridical entity, cannot**

proceed pro se, and (2) in line with having already given away all of my resources to the causes of educating inner-city children and the environment, I cannot afford to hire counsel for a juridical entity.

Accordingly, California-based "I Have A Dream"® and similar programs are interested persons.

Interested Entities or Persons No. 2 = Barclays Capital Ltd. and Barclays Bank PLC

Barclays Capital Ltd., in unprivileged communications, have admitted that they stole The Property involved in this law suit and that they conveyed copies of The Property to the Defendants in this law suit and the 13 Other International Banking Groups listed in the next section below.

When property has been stolen, the common law of conversion provides that the original owner can proceed against either the original thief or a subsequent holder whose title derives from the thief, and can pray for either the return of the property or its value.

For example, the descendants of holocaust victims from whom the Nazis stole works of art can proceed against the museums that currently hold the art works.

Indeed, Judge Karnow has effectively asked this Court to re-affirm its decision in Gladstone v. Hillel, 203 Cal.App.3d 977 (1st Dist. 1988) before the Superior Court invests its time and resources in trying this and the related 14 law suits. In Gladstone, the 1st District Court of Appeal enjoined explicitly under the common law of conversion the making of copies of jewelry from stolen molds even though jewelry design is normally protected by federal copyright law.

This would be the equivalent of the Nazis stealing Rembrandt etchings (Rembrandt was most famous for his etchings) and making prints that came into the possession of California museums.

And similar to Barclays Capital Ltd. making copies of The Property and transferring them to the Defendants in these lawsuits and the 13 Other International Banking Groups.

Obviously, if there are recoveries against the Defendants in this case and the 13 Other International Banking Groups, they will have a right of recovery against Barclays Capital Ltd. in British courts if they took proper precautions in their dealings with Barclays Capital Ltd.

Obviously, Barclays Bank PLC, a publicly-traded British corporation would suffer financially if there were recoveries by the Defendants in this law suit and by the 14 Other International Banking Groups against its U.K. subsidiary, Barclays Capital Ltd.

Interested Entities or Persons No. 3 = The 13 Other International Banking Groups

The 13 Other International Banking Groups whose title to The Property derives from Barclays Capital Ltd. and whose members are Defendants in related law suits:

ABN AMRO Inc.	Goldman Sachs
AIG/AIU	HSBC Bank
Bank of America	ING Bank
Bank of New York	JP Morgan Chase
Bear Stearns	Mellon Financial Corp.
Citicorp	Merrill Lynch

NB: The lawsuit against BNP Paribas was settled, so it is no longer an Interested Entity.

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New York, NY 10036
Mobile = 01-917-270-1280
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Dresdner Kleinwort Wasserstein Ltd./London (Sept. 1997 - present)

Designed and implemented international financial products for multinational corporations

Ernst & Young – Chief International Tax Partner (Technical)/New York (Jan. 1988 - Sept. 1997)

Designed financial products for two leading investment banks (Goldman Sachs & CS First Boston)

Structured international acquisitions/dispositions for two leading LBO funds (incl. Morgan Stanley)

Editor of Effective Tax Strategies for International Corporate Acquisitions covering 36 countries (Klewer (NL), 1992)

Associate Editor of Federal Income Taxation of Oil and Gas (CCH, monthly and annual)

Texaco Inc. - Senior Tax Counsel and Director of Worldwide Tax Planning (May 1974 - Dec. 1987) (when Texaco Inc. was still a Fortune-Ten Company)

Headed tax-attorney staff that structured all acquisitions, dispositions, special projects, etc.

Oversaw tax planning for Aramco (100% ownership of oil & gas in Saudi Arabia owned by Texaco Inc., Standard Oil Co. of California (aka, Chevron), Exxon Corp. and Mobil Corp.) during the 8-year takeover by the Saudi Government – continually winning kudos from the other three shareholders.

Oversaw tax planning for Caltex Corp. (50-50 ownership of all Texaco's and Chevron's refining and marketing operations East of Suez) – continually winning kudos from Chevron.

Professional Responsibilities

American Bar Association Tax Section

- Technical Reviewer for International Aspects of Submissions to the US Government by All Tax Section Committees – 1996-Present

- Chair, Foreign Activities of US Taxpayers Committee (the country's top 300 international tax attorneys with 22 working subcommittees) - 1994-96

- Chair of Various Subcommittees of the Foreign Activities of US Taxpayers Committee - 1987-94

Member of the Editorial Board and Frequent Author, Journal of International Taxation (Warren Gorham & Lamont, monthly)

N.Y.U. Law School Tax Institute -- Lecturer on Cross-Border Mergers & Acquisitions

Fordham University Graduate School of Business -- Associate Professor

Professional Qualifications

Certified Public Accountant, New York

Elijah Watt Sells Silver Medal for ranking 2nd nationally among 28,788 candidates on the Fall, 1971 Uniform CPA Examination

Member of the Bar, New York and Connecticut

Education

BA in Economics, University of Michigan, 1964

JD, Harvard Law School, 1967

LLM in Taxation, New York University School of Law, 1973

MS in Accounting, Northwestern University Graduate School of Management, 1971

Biographical References

Who's Who in American Law

Who's Who in America

Who's Who in The World

Personal

Co-Founder of the first Homeless Shelter in Fairfield County CT, 1976

Sponsor and chief benefactor of the "I Have A Dream"® Program of Stamford CT

- Patterned on self-made multi-billionaire Eugene Lang's promise in 1981 to the graduating sixth graders of Harlem PS 121 that he would guarantee their college tuition if they stayed in school – he then provided tutoring and mentoring until they graduated from H.S.

- IHAD-Stamford was one of 178 such programs in 51 American cities in the 1980's and 1990's – providing tutoring and mentoring for inner-city children as they progressed from third-grade through HS graduation and guaranteeing their college tuition – typically transforming single-digit HS graduating rates to 65% - 70%

- IHAD-Stamford served 200 inner-city children in three public-housing projects

Volunteer Treasurer of Gene Lang's National "I Have A Dream"℠ Foundation in the 1990's

At the request of the United Nations Under-Secretary General for the Environment because of my success in raising funds for IHAD-National and IHAD-Stamford, I raised funds for the United Nations Environment Programme (UNEP) – though the Under-Secretary General was based in Nairobi, my principal constact was with UNEP's Director for External Affairs at UNEP's Geneva Headquarters.

The record will show that after funding a modest life style and the education of my children, all of my resources have always been contributed to the causes of educating inner-city children and improving the environment.

When I retired from Ernst & Young in 1997 at age 55 to become an investment banker, the reason communicated to my EY partners and to the sponsors of the other 177 "I Have A Dream"℠ Programs (most of whom were CEO's of major U.S. corporations) was to earn substantial amounts of money that could be used to fund new "I Have A Dream"℠ Programs.

December 2002

Supreme Court, U.S.
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No. 09-1527

IN THE

Supreme Court of the United States

JOHN S. KARLS,

Petitioner,

v.

THE GOLDMAN SACHS GROUP, INC., ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should review questions of state law in the absence of any substantial federal question or any conflict between lower federal and state courts.

2. Whether California tort law recognizes a claim for conversion of an "idea."

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Respondent The Goldman Sachs Group, Inc. has no parent corporation and does not know of any publicly held corporation that owns 10% or more of its stock.

Respondents Citicorp North America, Inc., Citicorp USA, Inc., Citicorp Aircraft Management, Inc., Citicorp Bankers Leasing Corporation, Citicorp Credit Services, Inc., Citicorp Del-Lease, Inc., Citicorp Development Center, Inc. (USA), Citicorp Diners Club Inc., Citicorp Home Equity, Inc., Citicorp Home Mortgage Services, Inc., Citicorp Real Estate, Inc., Citicorp Securities Services, Inc., Citicorp National Services, Inc., Citicorp Payment Services, Inc., Citigroup Energy Inc., Citigroup Global Markets Inc., Citigroup Global Markets Realty Corp., Citigroup Investments, Inc., Citigroup Management Corp., and Citigroup Technology, Inc. are direct or indirect subsidiaries of Citigroup Inc. Citigroup Inc. is a publicly held company and does not know of any publicly held corporation that owns 10% or more of its stock.

Respondents ING Financial Holdings Corporation, ING North America Insurance Corporation, ING Life Insurance and Annuity Company, ING USA Annuity and Life Insurance Company, Reliastar Life Insurance Company, Reliastar Life Insurance Company of New York, and Security Life of Denver Insurance Company are indirect subsidiaries of ING Groep NV, a public limited company organized under the laws of the Netherlands. 99.9% of ING Groep NV's ordinary shares

are owned by Stichting ING Aandelen. Respondents do not know of any other holders of more than 10% interest in ING Groep NV or Stichting ING Aandelen.

The alleged Respondents identified as "The Goldman Sachs U.S.-Tax 'Consolidated Group' of Corporations," "The Citigroup U.S.-Tax 'Consolidated Group' of Corporations," "The ING U.S.-Tax 'Consolidated Group' of Life-Insurance Corporations," and "The ING U.S.-Tax 'Consolidated Group' of Non-Life-Insurance Corporations" (the "Consolidated Group Respondents") do not exist. They were improperly named throughout these proceedings, were never served with process, and never appeared in the actions.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT	ii
TABLE OF CONTENTS	iv
TABLE OF CITED AUTHORITIES	vi
OPINION BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
A. The Parties and History of the Dispute	2
B. District Court Proceedings	3
C. Circuit Court Proceedings	5
REASONS FOR DENYING THE PETITION	6
I. THE PETITION SEEKS REVIEW OF PURELY STATE LAW ISSUES AND PRESENTS NO SUBSTANTIAL FEDERAL QUESTIONS.	6

Contents

	Page
II. THE LOWER COURTS CORRECTLY APPLIED CALIFORNIA LAW IN REJECTING PETITIONER'S CLAIM FOR CONVERSION OF AN IDEA.	8
CONCLUSION	11

TABLE OF CITED AUTHORITIES

Page

Cases

FCC v. WJR, The Goodwill Station, Inc.,
337 U.S. 265 (1949) 8

Feist Publ'ns v. Rural Tel. Serv. Co.,
499 U.S. 340 (1991) 10

Italiani v. Metro-Goldwyn-Mayer Corp.,
45 Cal. App. 2d 464 (1941) 9

Kodadek v. MTV Networks, Inc.,
152 F.3d 1209 (9th Cir. 1998) 10

Melchior v. New Line Prods. Inc.,
106 Cal. App. 4th 779 (2003) 8

Minniear v. Tors,
266 Cal. App. 2d 495 (1968) 9

Moore v. Regents of the Univ. of Cal.,
51 Cal. 3d 120 (1990) 9

Morrow v. Topping,
437 F.2d 1155 (9th Cir. 1971) 8

Narrell v. Freeman,
872 F.2d 907 (9th Cir. 1989) 10

Cited Authorities

Page

Federal Statutes

17 U.S.C. § 102(b) 10

17 U.S.C. § 411(a) 10

28 U.S.C. § 1254 2

Rules

9th Cir. Gen. Order 6-11 5

9th Cir. R. 27-10 5

Fed. R. App. P. 47 8

Fed. R. Civ. P. 78(b) 7

Fed. R. Civ. P. 83 7

N.D. Cal. Civ. L.R. 7-1(b) 7

Sup. Ct. R. 10 6

No. 09-1527

IN THE
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JOHN S. KARLS,

Petitioner,

v.

THE GOLDMAN SACHS GROUP, INC., ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

OPINION BELOW

The orders of the United States Court of Appeals for the Ninth Circuit summarily affirming the district court's judgments and finding that Petitioner's appeals raised no substantial questions (Pet. App. 22a, 23a, and 24a) are unreported. The Ninth Circuit's orders denying Petitioner's motions for reconsideration en banc on behalf of the entire court (Pet. App. 4a, 5a, and 6a) are

unreported. The district court's orders granting Respondents' separate motions to dismiss in the underlying actions (Pet. App. 7a, 12a, and 17a) are unreported, as are the judgments of the district court.

JURISDICTION

Petitioner does not state the basis on which he seeks to invoke this Court's jurisdiction. This Court may review cases from the United States Courts of Appeal under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

Petitioner's meritless complaints for common-law conversion were dismissed with prejudice by the district court, exercising diversity jurisdiction, based on settled state law. The Ninth Circuit summarily affirmed the judgments after briefing and denied en banc review. The lower courts followed all applicable procedures and afforded Petitioner more than due process. Review is not warranted and the Petition for a Writ of Certiorari should be denied.

A. The Parties and History of the Dispute

Petitioner filed sixteen separate, nearly identical lawsuits against financial institutions in the Superior Court of California, San Francisco County.[1] His sixteen complaints asserted the same purported cause of action based on the same factual allegations. Included among those lawsuits were the three against Respondents at issue here, which Petitioner filed on June 15, 2009.

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[1] Petitioner states there are only "15 such actions." (Pet. at 26.) He has miscounted.

In his complaints, Petitioner attempted to allege a claim for conversion of an "idea" concerning certain tax-saving mechanisms that he purportedly "invented." (Pet. App. 27a.) His complaints defined the allegedly converted "Property" as "the idea that two different groups of companies would claim a tax advantage from combining the separate income taxes that each would otherwise pay on a portion of their income into a single tax for which both could claim benefit." (Pet. App. 28a.) In support of these assertions, Petitioner attached a June 30, 2006 *Wall Street Journal* article that supposedly described the "idea" and its widespread use by banks, not including any of the Respondents here. (Pet. App. 31a.) Beyond conclusory recitations that "[t]he Property belongs to the Plaintiff" and that Respondents "caused" the "Property" to be converted, Petitioner made no allegations regarding his supposed proprietary interest in the "idea" or connecting Respondents in any way to its purported use. (Pet. App. 26a-30a.)

Respondents timely removed the three actions against them to the United States District Court for the Northern District of California on the basis of federal diversity jurisdiction.

B. District Court Proceedings

Following removal, Respondents moved to dismiss the complaints for failure to state a claim on the basis of well-settled California law that the tort of conversion does not apply to "ideas" and the absence of any other alleged actionable interference by Respondents with

Petitioner's purported rights.[2] Petitioner opposed the motions and did not seek leave to amend. After full briefing on the merits, the district court dismissed the complaints with prejudice.[3] (Pet App. 7a, 12a, and 17a.) Relying on the applicable state law, the district court held: "It is well settled law that ideas may not be the subject of conversion." (Pet. App. 10a, 15a, and 20a (citations omitted).) Because Petitioner's complaints described "no other legally-recognized property interest or exclusive possession of any property by [Petitioner]," the district court also found the allegations insufficient to establish a "plausible basis" for any claim against Respondents. (*Id.*)

Contrary to Petitioner's assertions (Pet. at 51), the district court followed its local rules and the Federal Rules of Civil Procedure. The purported "illegal supplemental brief" referred to in the Petition does not exist. After full briefing, the district court exercised its discretion to find Respondents' motions "appropriate for decision without oral argument." (Pet App. 7a, 12a, and 17a.)

---

[2] The district court deemed the three actions "related" and assigned them to the same district judge, but the actions were not consolidated and remained separate cases.

[3] Respondents also moved to dismiss the complaints and to quash purported service as to the non-existent "Consolidated Group" Respondents. (Pet. App. 7a.) The district court found those motions moot upon the dismissal of the actions. (*Id.*)

C. Circuit Court Proceedings

Petitioner filed notices of appeal to the United States Court of Appeals for the Ninth Circuit. Following its review of the record and the parties' briefs in response to its Order to Show Cause, the Ninth Circuit concluded that the questions raised in Petitioner's appeals were "so insubstantial as not to require further argument" and summarily affirmed the district court's judgments pursuant to Ninth Circuit Rule 3-6. (Pet. App. 22a, 23a, and 24a.)

Petitioner filed petitions for rehearing en banc. Because Petitioner sought further consideration of the court's orders disposing of the appeals (as opposed to an opinion or memorandum disposition), pursuant to Ninth Circuit Rule 27-10 and Ninth Circuit General Order 6-11, the court appropriately construed the petitions for rehearing en banc as motions for reconsideration en banc of its orders and denied the requests on behalf of the full court. (Pet. App. 4a, 5a, and 6a.) Contrary to Petitioner's assertion, the three-judge panel did not "illegally seize[] control" of Petitioner's requests for en banc rehearing. (Pet. at 38, 49-50.) Nothing in the record supports Petitioner's imagined claim that his requests for en banc rehearing were treated improperly or that the court did anything other than follow the procedures set out in its own rules and general orders.

REASONS FOR DENYING THE PETITION

The Petition identifies no cognizable reason why this Court should depart from its standards to grant certiorari, and is without merit. Nor is there any basis to disturb the procedurally and substantively correct final judgments disposing of Petitioner's defective common-law claims against Respondents. As summarized below, Petitioner's contrary arguments have no legal basis and misstate the records of these actions.

I. THE PETITION SEEKS REVIEW OF PURELY STATE LAW ISSUES AND PRESENTS NO SUBSTANTIAL FEDERAL QUESTIONS.

The Petition presents no substantial legal issues, much less any "important federal question." *See* Sup. Ct. R. 10. Petitioner attempted to state a common-law conversion claim against Respondents. There is no federal question jurisdiction here, and Petitioner admits that California state law is controlling. The courts below appropriately applied state law to resolve the cases in unpublished orders. Nothing in their decisions conflicts with the rulings of the state court in Petitioner's thirteen other actions, several of which are now pending in the California Court of Appeal, and nothing about the settled state law issues supports review.

Petitioner's purported "questions presented" confirm that there is nothing for this Court to review. In his first "question presented," Petitioner criticizes the Ninth Circuit for alleged misapplication of

substantive California law of conversion. (Pet. at 44.) Petitioner states no reason why this issue presents an "important federal question" warranting this Court's review. It does not. Moreover, the California courts have dismissed at least two of Petitioner's identical lawsuits against other defendants on substantially similar grounds. Those cases are now pending before the California Court of Appeal, which is the appropriate venue to address any issues of California law. (Pet. at 32-33.) Finally, as summarized in Part II, *infra*, the district court correctly followed controlling California law in dismissing Petitioner's defective claims.

The remaining two purported "questions" raised in the Petition are meritless on their face. The claim that Respondents filed an "illegal supplemental brief" in the district court is false. No such brief was filed, which is why Petitioner does not (and cannot) provide evidence of the same in his Appendix. The district court was entitled to exercise its discretion to decide the motions without oral argument. *See* Fed. R. Civ. P. 78(b) (authorizing determination of motions on briefs without oral hearings); N.D. Cal. Civ. L.R. 7-1(b) (same). The Petition shows no prejudice to Petitioner on this subject or otherwise suggests why the issue merits this Court's attention. The claim that the Ninth Circuit's three-judge panel improperly denied his disfavored petitions for rehearing en banc in violation of Federal Rule of Appellate Procedure 35 is similarly fabricated and finds no support in the record. Both the district court and the court of appeal followed their rules. Petitioner does not challenge the rules themselves or procedures under which they were adopted. *See* Fed. R. Civ. P. 83 (authorizing a district court to "adopt and amend rules

governing its practice"); Fed. R. App. P. 47 (authorizing each court of appeal to "make and amend rules governing its practice"). Adherence to the local rules under the circumstances of this case did not deny Petitioner any due process of law. *See Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971) (per curiam) (rejecting due process claim based on court's ruling on motion to dismiss without oral argument under local rules); *see also FCC v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 276 (1949) ("Certainly the Constitution does not require oral argument in all cases where only insubstantial or frivolous questions of law, or indeed even substantial ones, are raised.").

Petitioner's frivolous new claims that these matters and the alleged interests of Holocaust victims, art lovers, inner-city children, or other non-parties (as to whom he has no standing to raise claims on behalf of) somehow implicate due process or equal protection concerns warrant no response.

II. THE LOWER COURTS CORRECTLY APPLIED CALIFORNIA LAW IN REJECTING PETITIONER'S CLAIM FOR CONVERSION OF AN IDEA.

Controlling California precedent mandated dismissal of Petitioner's claims. As the district court correctly held: "It is well settled law that ideas may not be the subject of conversion." (Pet. App. 10a, 15a, and 20a.) The district court cited *Melchior v. New Line Prods. Inc.*, 106 Cal. App. 4th 779, 793 (2003) (holding the "tort of conversion does not apply to ideas"), and

Minniear v. Tors, 266 Cal. App. 2d 495, 502 (1968) (holding "there can be no conversion of an idea."). Petitioner's attempt to circumvent this authority through a tired argument that his "idea" was complex and had to be memorialized in writing is of no import. Nor is the earlier California case, *Italiani v. Metro-Goldwyn-Mayer Corp.*, 45 Cal. App. 2d 464 (1941), which concerned the "sole question" whether an action was time-barred under the statute of limitations, *id.* at 465. California conversion law does not distinguish between written and unwritten ideas. *Minniear*, 266 Cal. App. 2d at 498 (holding a television show idea could not be converted even when the idea was reduced to a written script). Moreover, Petitioner has never claimed that Respondents converted any of his writings.

Petitioner's conversion claim also failed due to his inability to allege actionable interference with any of his property interests. *See Moore v. Regents of the Univ. of Cal.*, 51 Cal. 3d 120, 136 (1990) (affirming that conversion requires actual interference with ownership or possession of personal property). Because an idea by its nature cannot be exclusively possessed or controlled, and Petitioner at all times retained full ability to use it himself, he could not establish this essential element of conversion, even if he could allege a legally cognizable property interest.

Finally, Petitioner has identified no conflict between or among any state or federal courts on these issues. Indeed, his Appendix shows that the state court, like the lower federal courts here, dismissed one of

Petitioner's other lawsuits based on the same grounds.[4] (Pet. App. 40a.)

Notwithstanding the Petition's attempt to distort the record and effort to manufacture a federal issue, this is a simple case of faulty pleading of a common-law claim, and the record fails to sustain any alleged federal issue for this Court's review. Dismissal with prejudice in the lower courts was warranted.

[4] Petitioner notes that a state court dismissed one of his thirteen other similar lawsuits partly on federal copyright preemption grounds, apparently based on the argument that Petitioner's "idea" did not exist outside a tangible document. (Pet. at 30; Pet. App. 39a.) However, Petitioner has never attempted to assert a copyright claim against Respondents; nor could he. Copyright protection is expressly prohibited for ideas, procedures, concepts, and methods of operation. 17 U.S.C. § 102(b). Plaintiff has not alleged any of the essential elements of a copyright claim, including: that he is the registered owner of a valid copyright, *see* 17 U.S.C. § 411(a); *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1211 (9th Cir. 1998); that Respondents copied or impermissibly used any such copyrighted work, *see Narrell v. Freeman*, 872 F.2d 907, 910 (9th Cir. 1989); or that his idea is original and within the subject matter of copyright law, *see Feist Publ'ns v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345-47 (1991).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JUL 27 2009

Docket No. 09-1527

IN THE SUPREME COURT OF THE UNITED STATES

John S. Karls
Petitioner
v.
The Goldman Sachs Group, Inc., et. al.
Respondents

John S. Karls
Petitioner
v.
Citicorp of North America, Inc., et. al.
Respondents

John S. Karls
Petitioner
v.
ING Financial Holdings Corporation, et. al.
Respondents

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

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I. Questions Presented For Review

A. Are Goldman Sachs, et. al., correct in their Brief in Opposition that the Unconstitutional Denial of Due Process by the U.S. District Court can be made to vanish through the simple application of a false label?

B. Are Goldman Sachs, et. al., correct in their Brief in Opposition that the Unconstitutional Denial of Due Process by the three-judge Ninth Circuit panel can be made to vanish through the simple application of a false label?

C. Does the historically-classic tort, conversion of a trade secret, rest on precisely the same theoretical basis as conversion of fine art such as "The Mona Lisa" which is also nothing more than an idea (or artist's concept) that cannot exist "separate and apart from the property in the paper on which it is written, or the physical substance in which it is embodied" – meaning that denial of conversion status for a trade secret meeting the classic American common-law test for conversion constitutes an Unconstitutional Denial of Equal Protection of the Law for an estimated 10 million American inner-city children for whose education the value of the admittedly-stolen trade secret was dedicated when compared, for example, to heirs of Holocaust victims whose fine art was stolen by the Nazis upon discovery of the current holder of the art?

D. Are Goldman Sachs, et. al., correct in their Brief in Opposition that neither the Unconstitutional Denial of Due Process by both the U.S. District Court and the Ninth Circuit, nor the Unconstitutional Denial of Equal Protection of the Law comprise a "cognizable reason why this Court should depart from its standards to grant certiorari" when the oath of each Member of the Court is to "do equal right to the poor and to the rich" – and the victims of the unconstitutional actions in this case, an estimated 10 million American inner-city children, are among the poorest and least powerful members of American society?

TABLE OF CONTENTS

Page

Table of Cited Authorities.....v

Statement Of Facts Material To The Questions Presented For Review In This Reply Brief.....1

Argument.....3

A. Re: First Question Presented For Review In This Reply Brief: Are Goldman Sachs, et. al., correct in their Brief in Opposition that the Unconstitutional Denial of Due Process by the District Court can be made to vanish through the simple application of a false label?.....3

B. Re: Second Question Presented For Review In This Reply Brief: Are Goldman Sachs, et. al., correct in their Brief in Opposition that the Unconstitutional Denial of Due Process by the three-judge Ninth Circuit panel can be made to vanish through the simple application of a false label?.....5

C. Re: Third Question Presented For Review In This Reply Brief: Does the historically-classic tort, conversion of a trade secret, rest on precisely the same theoretical basis as conversion of fine art such as "The Mona Lisa" which is also nothing more than an idea (or artist's concept) that cannot exist "separate and apart from the property in the paper on which it is written, or the physical substance in which it is embodied"

– meaning that denial of conversion status for a trade secret meeting the classic American common-law test for conversion constitutes an Unconstitutional Denial of Equal Protection of the Law for an estimated 10 million American inner-city children for whose education the value of the admittedly-stolen trade secret was dedicated when compared, for example, to heirs of Holocaust victims whose fine art was stolen by the Nazis upon discovery of the current holder of the art?.....16

D. Re: Fourth Question Presented For Review In This Reply Brief: Are Goldman Sachs, et. al., correct in their Brief in Opposition that neither the Unconstitutional Denial of Due Process by both the U.S. District Court and the Ninth Circuit, nor the Unconstitutional Denial of Equal Protection of the Law comprise a "cognizable reason why this Court should depart from its standards to grant certiorari" when the oath of each Member of the Court is to "do equal right to the poor and to the rich" – and the victims of the unconstitutional actions in this case, an estimated 10 million American inner-city children, are among the poorest and least powerful members of American society?.....11

Conclusion.....13

V. Table Of Cited Authorities

Cases

Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954).....12

Erie Railroad v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).....9, 13

Gladstone v. Hillel, 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988)... .....3, 4, 10

Italiani v. Metro-Goldwyn-Mayer Corporation, 45 Cal.App.2d 464, 114 P.2d 370 (3rd Dist. 1941).....1, 9

Karls v. The Bank of New York, et. al. (Cal. Sup. Ct. No. 489460, Cal. Ct. App. No. A127444).....8

Karls v. Wachovia Trust Company of California, et. al. (Ca. Sup. Ct. No. 487535, Cal. Ct. App. No. 126669).....2, 3, 9, 13

Karls v. Wells Fargo & Company (Cal. Sup. Ct. No. 486175, Cal. Ct. App. No. 126671).....2, 3, 9, 13

Melchior v. New Line Productions, 106 Cal.App.4th 779, 131 Cal.Rptr. 347 (2nd Dist. 2003).....10

Minniear v. Tors, 266 Cal.App.2d 495, 72 Cal.Rptr. 287 (2nd Dist. 1968).....10

Statutes

28 U.S.C. § 453 11

Cal. Civil Code § 3426.7 9

Rules

Federal Rule of Appellate Procedure 35 ..... 5, 6

U.S. District Court (ND Cal.) Civil Local Rule 7-3(d) 4, 5

Publications

18 Am.Jur.2d *Conversion § 7: Tangible and Intangible Property, Generally* (2009) 1, 9

1 Melvin F. Jager, *Trade Secrets Law, Ch. 2: The Historical Development of Trade Secret Concepts* (West Publishing Company – Looseleaf © 2010) 7

2 Melvin F. Jager, *Trade Secrets Law, Ch. 50: The Trade Secrets Law of New York* (West Publishing Company – Looseleaf © 2010) 8

Restatement (First) of the Law (Torts), § 757-759 8

Statement Of Facts Material To The Questions Presented For Review In This Reply Brief

These three actions are for the classic tort of common-law conversion of a trade secret, from which evolved the additional common-law tort of misappropriation of trade secrets.

The classic tort of common-law conversion of a trade secret rests on the same principle that governs the application of common-law conversion to fine art such as Leonardo da Vinci's "Mona Lisa" – whether the idea (aka artist's concept) cannot exist "separate and apart from the property in the paper on which it is written, or the physical substance in which it is embodied." *Italiani v. Metro-Goldwyn-Mayer Corporation,* 45 Cal.App.2d 464, 466, 114 P.2d 370 (3rd Dist. 1941) quoting 13 Corpus Juris, p. 948, sec. 5-a; *Accord,* 18 Am.Jur.2d *Conversion § 7: Tangible and Intangible Property, Generally* (2010).

Barclays Capital Ltd. has admitted in unprivileged communications that it stole Petitioner's trade secret and that 15 international financial institutions acquired the trade secret from Barclays Capital Ltd. under conditions of confidentiality, including Goldman Sachs, et. al., in these three actions.

Since the tort of common-law conversion permits the owner to proceed against either the thief or the current holder (the classic example would be the heirs of Holocaust victims whose fine art was stolen by the Nazis), the Petitioner sued the 15 international financial institutions in California Superior Court (San Francisco).

Goldman Sachs, et. al., fled to U.S. District Court (ND Cal.), on diversity grounds since the

defendants in all three actions were headquartered in New York City.

Of the other 12 cases that remained in state court:

- *Karls v. Wachovia Trust Company of California, et. al.* (Ca. Sup. Ct. No. 487535, Cal. Ct. App. No. 126669) and *Karls v. Wells Fargo & Company* (Cal. Sup. Ct. No. 486175, Cal. Ct. App. No. 126671) are pending in the California Court of Appeals (First District) and are scheduled for hearing on August 4, 2010.
- 7 financial institutions, *ABN AMRO, AIG/AIU, Bank of America, Bear Stearns, HSBC Bank, JP Morgan Chase,* and *Merrill Lynch,* agreed last fall with the Petitioner to a stay of proceedings in California Superior Court (San Francisco) pending a final disposition of the appeals in *Wachovia* and *Wells Fargo.*
- 1 financial institution, *BNP Paribas,* settled with the Petitioner on December 21, 2009.
- 2 financial institutions, *Mellon Financial Corporation* and *The Bank of New York,* refused to enter into stays, but their actions are still effectively governed by the final disposition of the appeals in *Wachovia* and *Wells Fargo.*

Argument

A. Re: First Question Presented For Review In This Reply Brief: Are Goldman Sachs, et. al., correct in their Brief in Opposition that the Unconstitutional Denial of Due Process by the U.S. District Court can be made to vanish through the simple application of a false label?

In two of the 12 virtually-identical actions remaining in state court, the California Superior Court expert on intellectual property, Judge Curtis E.A. Karnow, granted the pre-trial motions to dismiss in *Karls v. Wachovia Trust Company of California, et. al.* (Ca. Sup. Ct. No. 487535, Cal. Ct. App. No. 126669) and *Karls v. Wells Fargo & Company* (Cal. Sup. Ct. No. 486175, Cal. Ct. App. No. 126671) on the grounds: (1) actions for common-law conversion are preempted by federal copyright law, and (2) an idea cannot be the subject of common-law conversion despite meeting the classic test of being unable to exist "separate and apart from the property in the paper on which it is written, or the physical substance in which it is embodied" – even though he was well aware that appeal would lie with the California Court of Appeal (First District) and that both positions were diametrically opposed to that court's decision in *Gladstone,* 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988).

Moreover, Judge Karnow's orders (Petition Appendix, pp. 39a–42a) granted the pre-trial motions to dismiss without leave to amend on the grounds that amendment would be futile – even though he was well aware that the separate tort of

"misappropriation of trade secrets" does not require that the secret have any corporeal existence and is not preempted by federal copyright law.

The only explanation for such seemingly-bizarre behavior is that Judge Karnow wanted to compel a "pre-packaged appeal" to the California Court of Appeal (First District) of these issues to ascertain whether it would re-affirm its decision in *Gladstone, supra,* before the California Superior Court invested its time in trying the 12 cases that then remained in state court.

Accordingly, it would have been crucial to explain this to U.S. District Court Judge Jeffrey S. White in transmitting to him copies of Judge Karnow's decisions pursuant to Civil L.R. 7-3(d).

However, Petitioner's transmittal stated that since briefing had been completed on the pre-trial motions of Goldman Sachs, et. al., Civil L.R. 7-3(d) did not permit any comment on the decisions.

In violation of Civil L.R. 7-3(d), Goldman Sachs, et. al., later made voluminous comments regarding Judge Karnow's decisions in the course of transmitting another set of copies of the decisions.

Rather than rejecting the illegal comments of Goldman Sachs, et. al., Judge White promptly cancelled the hearing, which would have been the Petitioner's only opportunity to comment on the obvious intent of Judge Karnow's decisions, and granted the pre-trial motions of Goldman Sachs, et. al., to dismiss without leave to amend. His decisions (Petition Appendix, pp. 7a-21a) do not even discuss the classic tort of conversion of a trade secret or even mention *Gladstone, supra.* (It should be noted that Judge White made an erroneous finding of "fact" that the trade secret was not secret, even though his

finding was not supported by a scintilla of evidence, and was flatly contradicted by the Complaint and Wall Street Journal article attached to the Complaint.)

In the Brief in Opposition to the Petition for Certiorari, Goldman Sachs, et. al., do not deny that Judge White's actions would have constituted an Unconstitutional Denial of Due Process if the voluminous comments of Goldman Sachs, et. al., had comprised "argument" which is prohibited by Civil L.R. 7-3(d).

Instead, Goldman Sachs, et. al., merely claim that the "illegal supplemental brief does not exist." Brief in Opposition, p. 4, emphasis added.

Civil L.R. 7-3(d) prohibited the submission of any additional "argument" once briefing had been completed.

Merely labeling the voluminous comments of Goldman Sachs, et. al., as something other than a "brief" does not change the character of the voluminous comments as argument. If the voluminous comments were not intended to influence Judge White, then why were they submitted?

B. Re: Second Question Presented For Review In This Reply Brief: Are Goldman Sachs, et. al., correct in their Brief in Opposition that the Unconstitutional Denial of Due Process by the three-judge Ninth Circuit panel can be made to vanish through the simple application of a false label?

Pursuant to Federal Rules of Appellate Procedure 35, Petitioner filed solely a "Petition for

Rehearing En Banc" even though FRAP 35(a) states that such a Petition "is not favored." Even though FRAP 35(f) mandates a vote on the Petition if any Ninth Circuit Judge calls for a vote, the original three-judge panel illegally seized control of the Petition and rendered FRAP 35(f) a nullity by preventing any other Ninth Circuit Judge from even seeing the Petition under the "fig leaf" of re-construing the Petition as a mere "motion" and then dismissing the "motion" under a local rule. (Petition Appendix, pp. 4a-6a.)

Since FRAP 35(f) accords the aggrieved party filing a Petition for Rehearing En Banc the right to have every Circuit Court Judge receive the Petition in order to be in a position to call for a vote, the nullification of that right comprises an Unconstitutional Denial of Due Process of Law.

Goldman Sachs, et. al., simply argue that it is proper to construe a "Petition for Rehearing En Banc" as nothing more than a "motion" that can then be dismissed by the original three-judge panel pursuant to a local rule.

It is an Unconstitutional Denial of Due Process to mislabel a FRAP 35 Petition as a "motion" in order to deny Petitioner the right under FRAP 35(f) to have every Circuit Court Judge receive the Petition.

C. Re: Third Question Presented For Review In This Reply Brief: Does the historically-classic tort, conversion of a trade secret, rest on precisely the same theoretical basis as conversion of fine art such as "The Mona Lisa" which is also nothing more than an idea (or artist's concept) that cannot exist

"separate and apart from the property in the paper on which it is written, or the physical substance in which it is embodied" – meaning that denial of conversion status for a trade secret meeting the classic American common-law test for conversion constitutes an Unconstitutional Denial of Equal Protection of the Law for an estimated 10 million American inner-city children for whose education the value of the admittedly-stolen trade secret was dedicated when compared, for example, to heirs of Holocaust victims whose fine art was stolen by the Nazis upon discovery of the current holder of the art?

1 Melvin F. Jager, *Trade Secrets Law, Ch. 2: The Historical Development of Trade Secret Concepts* (West Publishing Company – Looseleaf © 2010) can be summarized as follows:

1. Until the mid-1800's, trade secrets were only protected by common-law conversion actions or contract-enforcement actions.
2. Because of the importance of protecting trade secrets, there evolved since the mid-1800's in both England and the United States a new tort commonly called "misappropriation of trade secrets" to protect trade secrets that were not protected by contract and that did not meet the standard for common-law conversion that the trade secret could not exist "separate and apart from the property in the paper on which it is written, or the physical substance in which it is embodied."

3. This evolution was reflected in the *Restatement (First) of the Law (Torts), §§ 757-759.*
4. These sections were omitted from the Restatement of Torts, 2d (1978), causing the National Conference of Commissioners on Uniform State Laws to propose in 1979 the Uniform Trade Secrets Act.
5. The Uniform Trade Secrets Act has not been adopted in any form by the State of New York and, accordingly, trade secrets are still protected in New York by a contract-enforcement action, or a classic common-law conversion action, or a common-law action for misappropriation of a trade secret, or all three – as amplified in 2 Melvin F. Jager, *Trade Secrets Law, Chapter 50: The Trade Secrets Law of New York* (West Publishing Company – Looseleaf © 2010).
6. The Uniform Trade Secret Act, unlike the classic common-law conversion action, excuses a current holder who does not "know or [has] reason to know" that the trade secret was stolen. In the typical case, the current holder is a competitor of the rightful owner of the secret and the actual thief is an individual whose income and assets are paltry in comparison to the economic damage that has been caused. Accordingly, various federal statutes make theft of a trade secret a crime.

With regard to the third point, in *Karls v. The Bank of New York, et. al.* (Cal. Sup. Ct. No. 489460, Cal. Ct. App. No. A127444), one the 12 nearly-identical lawsuits which remain in state court and one of only two that were not stayed pending final

disposition of the appeals in *Wachovia, supra,* and *Wells Fargo, supra,* the Defendants demurred following the earlier decisions by Judge Karnow and Judge White and raised the issue of preemption under the California Uniform Trade Secrets Act, citing Cal. Civil Code § 3426.7. The Petitioner pointed out that his trade secret was stolen in the U.K. by a U.K. citizen and a U.K. corporation, that when the U.K. corporation transmitted the trade secret to The Bank of New York the transmittal occurred in either the U.K. or New York, and that neither the U.K. nor New York has adopted the American Uniform Trade Secrets Act. The Bank of New York conceded this "choice of law" issue in oral argument in the California Superior Court and in its answering brief in the California Court of Appeal. Accordingly, under *Erie Railroad v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), these concessions should be binding on Goldman Sachs, Citicorp and ING, all of whom are headquartered in New York City.

The standard for a classic common-law conversion action is:

> An idea (including an artist's concept) that cannot exist "separate and apart from the property in the paper on which it is written, or the physical substance in which it is embodied" *Italiani v. Metro-Goldwyn-Mayer Corporation,* 45 Cal.App.2d 464, 466, 114 P.2d 370 (3rd Dist. 1941) quoting 13 Corpus Juris, p. 948, sec. 5-a; *Accord,* 18 Am.Jur.2d *Conversion § 7: Tangible and Intangible Property, Generally* (2010).

Indeed, a more recent case was decided by the California Court of Appeal (First District) which

originally had appellate jurisdiction over all 15 of Petitioner's lawsuits and still does except for the three actions that are the subject of this Petition and the one that was settled on December 21, 2009. *Gladstone v. Hillel,* 203 Cal.App.3d 977, 250 Cal.Rptr. 372 (1st Dist. 1988) held in line with the authorities cited above that an "idea" or "artist's concept" was a proper subject for common-law conversion where the molds of a designer of fine jewelry had been stolen. *Gladstone* further held that a proper remedy for conversion included not only the return of the stolen molds, but also that all new molds made from the stolen molds and all jewelry made from any of the molds had to be destroyed or given to the Plaintiff.

The only authority that Respondents, the U.S. District Court and the Ninth Circuit Court of Appeals have been able to cite are dicta in two cases whose results are easily reconcilable on a factual basis with the well-settled principles just described:

- *Minniear v. Tors*, 266 Cal.App.2d 495, 72 Cal.Rptr. 287 (2nd Dist. 1968) involved a mere bullet-point "idea" in an outline and the bullet-point "idea" could "exist separate and apart from the paper on which it was written."
- *Melchior v. New Line Productions*, 106 Cal.App.4th 779, 131 Cal.Rptr. 482 (2nd Dist. 2003) involved a plaintiff's "idea" for a motion picture that was never even written down by the plaintiff who admitted that the script was authored by someone else.

The abolishment of the classic tort of common-law conversion of a trade secret in New York and the other states that have not adopted the Uniform Trade Secrets Act by U.S. District Court and the

Ninth Circuit panel raises the "Unconstitutional Denial of Equal Protection of the Law" issue:

- Are U.S. District Court and the Ninth Circuit abolishing the classic standard for common-law conversion only for trade secrets, or are they abolishing the classic standard for all ideas including fine art and fine jewelry?
- If they are only abolishing the classic common-law conversion standard for trade secrets, then why isn't their discriminatory abolishment an Unconstitutional Denial of Equal Protection of the Law for the estimated 10 million American inner-city children for whose education the admittedly-stolen trade secret was dedicated?

D. Re: Fourth Question Presented For Review In This Reply Brief: Are Goldman Sachs, et. al., correct in their Brief in Opposition that neither the Unconstitutional Denial of Due Process by both the U.S. District Court and the Ninth Circuit, nor the Unconstitutional Denial of Equal Protection of the Law comprise a "cognizable reason why this Court should depart from its standards to grant certiorari" when the oath of each Member of the Court is to "do equal right to the poor and rich" – and the victims of the unconstitutional actions in this case, an estimated 10 million American inner-city children, are among the poorest and least powerful members of American society?

The oath for a U.S. Supreme Court Justice is specified in 28 U.S. Code § 453 which provides:

> "Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: 'I, ------, do solemnly swear (or affirm) that I will administer justice without respect to persons, and **do equal right to the poor and to the rich**, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ------ under the Constitution and laws of the United States. So help me God.'" (emphasis added)

Accordingly, even if Goldman Sachs, et. al., are correct that this Court should turn a blind eye to the Unconstitutional Denials of Due Process perpetrated by both the U.S. District Court and the Ninth Circuit Court of Appeals, the oath for a Supreme Court Justice to "do equal right to the poor and to the rich" mirrors the requirement of the U.S. Constitution of "Equal Protection Of The Law" that was found to apply to the Federal Government in *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954).

Even if Goldman Sachs, et. al., are correct that the U.S. Supreme Court should not be concerned with Unconstitutional Denials of Due Process and an Unconstitutional Denial of Equal Protection Of The Law, each Supreme Court Justice should still be concerned about her/his oath of office to "do equal right to the poor and to the rich."

Conclusion

For the reasons stated above, it is respectfully requested that the granting by the U.S. District Court (ND Cal.) of Respondents' Motions to Dismiss be reversed, and the actions be remanded to the U.S. District Court (ND Cal.) for further proceedings consistent, pursuant to *Erie Railroad v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), with the final disposition of the appeals in *Karls v. Wachovia Trust Company of California, et. al.* (Cal. Ct. App. No. 126669) and *Karls v. Wells Fargo & Company* (Cal. Ct. App. No. 126671).

Respectfully submitted,

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